

OVERSIGHT HEARING ON THE IMPLEMENTATION
OF THE 1996 AMENDMENTS TO THE MAGNU-
SON-STEVENSON FISHERY CONSERVATION AND
MANAGEMENT ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS
OF THE
COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

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OVERSIGHT HEARING ON THE IMPLEMENTATION OF THE 1996 AMENDMENTS TO THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

THURSDAY, JULY 22, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND
OCEANS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:02 a.m., in room 1334, Longworth House Office Building, Hon. Jim Saxton (chairman of the subcommittee) presiding.

Members present: Representatives Saxton, Hayes, and Faleomavaega.

Mr. SAXTON. Good morning. I have been handed a note asking me to point out that testimony for today's hearing was requested to be delivered by 4 p.m. on Monday, July 19th, 1999. I would like to thank Mr. Brancalone for complying with that request. The National Marine Fisheries Service testimony had not been delivered at the close of business yesterday. Some of you may be aware that Chairman Young recessed the hearing yesterday before the Administration witness could testify, because the full Committee had not had sufficient time to review the Administration's testimony. I will not do this. However, this has become a disturbing trend that we do not appreciate.

Having said that, we will proceed with the hearing.

STATEMENT OF HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SAXTON. The Subcommittee on Fisheries Conservation, Wildlife and Oceans is meeting today to discuss the implementation of the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

In 1996, Congress passed the Sustainable Fisheries Act. The Act was a major revision to the Magnuson-Stevens Fishery Conservation and Management Act, and it directed the Secretary of Commerce and the regional councils to undertake a number of new initiatives.

It was a forward-looking piece of legislation that focused attention on three main areas: reducing bycatch; identifying and protecting habitat; and identifying, protecting and, when necessary,

rebuilding over-fished fisheries. These are important initiatives for the National Marine Fisheries Service to undertake.

It has now been almost 3 years since the enactment of the Sustainable Fisheries Act, and this hearing will examine how well NMFS is implementing the provisions of that historic fisheries act.

In addition, this examination represents the first of several hearings that will hopefully result in the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act during this session of Congress. I expect there will be a number of issues that members will want to focus on during these hearings.

Today we will hear from just two witnesses: Ms. Penny Dalton, who represents NMFS; and Mr. Joe Brancalone, who is no stranger to the Committee, who will testify on behalf of the eight regional fishery management councils.

I believe this deliberation will set the stage for our reauthorization process, and I look forward to hearing from our distinguished witnesses.

[The prepared statement of Mr. Saxton follows:]

STATEMENT OF HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Today we are discussing the implementation of the 1996 amendments Magnuson Stevens Fishery Conservation and Management Act.

In 1996, Congress passed the Sustainable Fisheries Act. This Act was a major revision of the Magnuson-Stevens Fishery Conservation and Management Act and it directed the Secretary of Commerce and the Regional Councils to undertake a number of new initiatives. It was a forward-looking piece of legislation that focused attention on three main areas: reducing bycatch; identifying and protecting habitat; and identifying, preventing, and, when necessary, rebuilding overfished fisheries. These are important initiatives for the National Marine Fisheries Service to undertake.

It has now been almost three years since the enactment of the Sustainable Fisheries Act and this hearing will examine how well the National Marine Fisheries Service is implementing the provisions of that historic Fisheries Act. In addition, this examination represents the first of several hearings that will hopefully result in the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. I expect there are a number of issues that Members will want to focus on during these hearings.

Today, we will hear from just two witnesses: Ms. Penny Dalton, who will represent NMFS; and Mr. Joe Brancalone, who is no stranger to this Committee, will testify on behalf of the eight regional fishery management councils.

I believe this deliberation will set the stage for our reauthorization process and I look forward to hearing from our distinguished witnesses.

Mr. SAXTON. I would now ask Penny if you would like to take your place, and Mr. Brancalone, if you would like to take yours. You may proceed with your testimony. And let me remind you that we generally have a 5-minute rule. Obviously, at today's hearing we have some flexibility because of the fact that we have only you folks to hear from. So you may proceed.

STATEMENT OF PENELOPE D. DALTON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, U.S. DEPARTMENT OF COMMERCE; ACCOMPANIED BY ANDY ROSENBERG, DEPUTY ADMINISTRATOR OF FISHERIES, NATIONAL MARINE FISHERIES SERVICE, U.S. DEPARTMENT OF COMMERCE

Ms. DALTON. Mr. Chairman, thank you for inviting me to testify today on implementation and reauthorization of the Magnuson-Stevens

vens Fishery Conservation and Management Act. I am Penny Dalton, Assistant Administrator for Fisheries of NOAA.

As we approach the close of the 20th century, we are at a critical point in fisheries management, with considerable work ahead of us. In the 23 years since the enactment of the Magnuson-Stevens Act, we have seen the complete Americanization of Federal fisheries, the expansion of the U.S. seafood industry, declines in many marine resources, and the rise of public interest in fisheries issues.

We have seen some successes from our management actions, including a rebound in Georges Bank haddock, the rebuilding of Atlantic king mackerel, and the continued health of Alaskan fish stocks. Yet considerable work remains. Scientists estimate that we could increase U.S. fishery landings by up to three million metric tons by rebuilding fisheries and harvesting them at long-term potential yields.

Over the years, the Magnuson-Stevens Act has changed and evolved through several reauthorizations. The most significant has probably been the 1996 revisions of the Sustainable Fisheries Act that address a number of conservation issues. First, to prevent over-fishing and rebuild depleted fisheries, the SFA caps harvests at the maximum sustainable yield and requires fishery management plans to rebuild any over-fished fishery.

Second, the SFA sets protection of fishery habitat as a management priority. To enhance this priority, the SFA requires that plans identify habitat that is necessary to fish for spawning, feeding, or growth. The new law also clarifies our existing authority to comment on Federal actions that affect essential fish habitat.

Third, to reduce bycatch and waste, the SFA adds a new national standard requiring that plans minimize bycatch and the mortality of bycatch that cannot be avoided. It also calls for assessment of bycatch and steps to reduce it.

The new conservation requirements may have far-reaching effects on recreational and commercial fishing, and on fishermen, their families, and communities. To address this concern, the SFA establishes a new national standard which requires fishery management plans to ensure sustained participation of fishing communities and minimize adverse impacts. In addition, a national standard has been added on promoting the safety of human life at sea.

Finally, the SFA provides a number of new tools for addressing problems related to the transition to sustainable fisheries, including amendments to provide for fisheries disaster relief, fishing capacity reduction programs, vessel financing, and grants and other financial assistance.

NOAA Fisheries takes seriously its new mandates under the SFA. We are continuing to work to ensure that SFA requirements are implemented, and that management programs fully protect marine resources and provide for the needs of fishing communities. A great deal of work remains to be done, and the benefits of the changes we make now may take years, perhaps decades, to realize.

We need to direct resources and effort to the scientific and technical aspects of our work. In addition, the fishery decisions that we face are becoming ever more complex and contentious; therefore, we must build consensus among various stakeholders that moves us toward healthy and sustainable fisheries.

Nearly all of the regulations and policy guidance related to SFA implementation have been developed and published. These regulations and guidelines address such issues as foreign processing in internal waters, observer health and safety, procedures for monitoring recreational fisheries, Secretarial emergency actions, and negotiated rulemaking. Proposed regulations for carrying out fishing capacity reduction programs were published in January 1999. Final regulations currently are under review.

The national standard guidelines were one important area where substantial revisions were necessary because of the significant changes made by the SFA. The national standards are the guiding principles for management of our nation's fishery resources, and any management plans or associated regulations must comply.

The national standard guidelines were revised and published as a final rule in May 1998. They address the need to end over-fishing, reduce bycatch, and rebuild stocks. They also provide guidance for evaluating impacts on fishing communities and enhancing safety at sea.

Another significant change is the increased emphasis of the Magnuson-Stevens Act on conserving and enhancing essential fish habitat. In December 1997, NOAA Fisheries published an interim final rule that establishes guidelines for describing and identifying EFH and fishery management plans, including adverse impacts on such habitat from fishing, and other actions to conserve and enhance EFH. The rule also provides procedures for consultations on actions that affect EFH.

To date, NOAA Fisheries has conducted over 400 consultations with Federal agencies whose actions may adversely affect EFH. We have completed seven agreements with other Federal agencies to establish specific procedures for using existing environmental review processes to handle those consultations. And we are working on 36 more agreements.

In addition to revising the national standards, the SFA established a number of other new requirements for fishery management plans that necessitate their amendment. The SFA imposed a deadline of October 11, 1998 for amendments to each of the 39 existing fishery management plans. As of June 1999, 52 amendments were either approved or partially approved. Another two amendments were under Secretarial review. And the remaining 13 were scheduled to begin Secretarial review this summer.

Despite the councils' best efforts, there were some proposed amendments that did not satisfy requirements, or for which the analyses were inadequate. NOAA Fisheries disapproved or partially approved these amendments, and is working with the councils to improve them.

I cannot over-emphasize the critical role and contribution of the councils in implementing the SFA and bringing Federal fishery management into compliance with its requirements. The councils have performed admirably over the years in developing plans, resolving conflicts, and making recommendations to the Secretary, particularly in light of the controversy and conflicts surrounding many fishery decisions. While both NOAA Fisheries and the councils are adjusting to the changes made by the SFA, we remain com-

mitted to working together in the transition to sustainable fisheries.

Another initiative of the SFA was to establish a new title on fishery monitoring and research. Meeting our responsibilities under the Magnuson-Stevens Act and other applicable laws requires collection of a considerable amount of data, and in many fisheries we do not have what we need. Consequently, we are vulnerable to overlooking or accepting alternatives with unanticipated effects, due to the limitations of our models and underlying data.

NOAA Fisheries is addressing this vulnerability by placing a high priority on using funds to fill in gaps, particularly in the area of economic and social data. In January of this year, NOAA Fisheries delivered a report entitled "Implementation of a Fishing Vessel Registration and Fisheries Information System," that calls for Federal-state partnerships to improve the quality and quantity of information available. Such partnerships are an important mechanism for sharing resources and reducing duplicative efforts.

In addition to the data management report, the SFA required about 20 other studies and reports to Congress that address many critical issues in fisheries management. We will be using the findings and recommendations of these reports to improve our conservation and management programs. They also contain a great deal of useful information that could inform and guide the reauthorization process.

We are still working to understand and effectively implement the SFA, and would not propose major changes to the Magnuson-Stevens Act at this time. However, we have established an internal agency taskforce to evaluate SFA implementation, and the group has identified some revisions that may be useful to improve efficiency and resolve relatively minor problems.

We are also reviewing issues raised by the taskforce, the councils, and some of our stakeholders. Among the issues identified thus far:

One, a review process for fishery management plans, amendments, and regulations. The SFA attempted to simplify and tighten the approval process for management plans and regulations. However, it creates two distinct review and implementation processes; one for plans and amendments, and another for implementing regulations. As a result, the decision to approve or disapprove a plan or amendment may be necessary before the public has had an adequate opportunity to comment on the accompanying regulations. This disconnect should be addressed during the reauthorization process.

In addition, the Committee may wish to consider reinstating the initial review of fishery management plans and amendments by the Secretary. At present, 2 or 3 months may elapse before the Secretary makes his determination on a plan or amendment. And if it is then disapproved, months may lapse before the council can modify or resubmit it. While the initial review was eliminated by the SFA to shorten the review process, it actually may provide a mechanism to shorten the time to get a plan or amendment in place, because it allows us to identify early problems.

As I indicated in the April hearing on this topic, the Magnuson-Stevens Act currently restricts the collection of economic data from

processors. Removal of this restriction could improve the quantity and quality of information available to meet the requirements of the Regulatory Flexibility Act and other laws requiring economic analysis.

Three, coral reef protection. Special management areas, including those designated to protect coral reefs, hard bottoms, and precious corals, are important commercial resources and valuable habitats. Currently, we have the authority to regulate anchoring and other activities of fishing vessels that affect fish habitat. Threats to those resources from non-fishing vessels remain largely outside agency authority. We would like to clarify and strengthen NOAA Fisheries' authority to regulate the actions of a vessel that directly impacts resources being managed under the Magnuson-Stevens Act.

Caribbean Council jurisdiction. The current description of the Caribbean Council limits its jurisdiction to Federal waters off Puerto Rico and the U.S. Virgin Islands. As a result, the council cannot develop FMPs governing fishing in Federal waters around Navassa Island or any other U.S. possession in the Caribbean. Jurisdiction of the Caribbean Council could be expanded to cover Navassa Island.

Five, council meeting notification. The Magnuson-Stevens Act currently mandates that the councils spend a great deal of money every year to publish meeting notices in local newspapers in regional fishing ports. By contrast, e-mail, public service announcements, and notices included with marine weather forecasts are much cheaper, and could be more effective in reaching fishery participants and stakeholders.

In conclusion, we look forward to working with the Committee on the reauthorization and on high-priority policy issues such as observer programs, individual transferrable quotas, and funding and fee authorities.

This concludes my testimony. Thank you for the opportunity to discuss the Magnuson-Stevens Act. And I am ready to answer any questions that members may have.

[The prepared statement of Ms. Dalton follows:]

STATEMENT OF PENELOPE D. DALTON, ASSISTANT ADMINISTRATOR FOR FISHERIES,
NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC AD-
MINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today on implementation and reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I am Penelope Dalton, Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration (NOAA).

Building a Foundation for Sustainable Fisheries

The fishery resources found off our shores are a valuable national heritage. In 1997, U.S. commercial fisheries produced almost \$3.5 billion in dockside revenues. By weight of catch, the United States is the world's fifth largest fishing nation, harvesting almost 10 billion pounds annually. The United States also is the third largest seafood exporter, with exports valued at over \$3 billion in 1996. In addition to supporting the commercial seafood industry, U.S. fishery resources provided enjoyment for almost 9 million saltwater anglers who caught an estimated 366 million fish in 1997.

As we approach the close of the 20th century, we are at a crucial point in fisheries management, with considerable work ahead of us. In the 23 years since the enactment of the Magnuson-Stevens Act, we have seen the complete Americanization of fisheries in Federal waters, the expansion of the U.S. fishing industry, declines in many fishery resources, and the rise of public interest in fisheries issues. We have

seen some successes from our management actions, including the initial rebound of a few depleted stocks like Georges Bank haddock, the rebuilding of Atlantic king mackerel, and the continued strong production of fish stocks off Alaska. However, 12 percent of U.S. living marine resources are overfished or are approaching overfished, 24 percent are not overfished, and there is another 64 percent whose status is unknown. Scientists estimate that we could increase U.S. fishery landings by up to 3 million metric tons by rebuilding fisheries and harvesting them at long-term potential yields.

The Magnuson-Stevens Act, of course, provides the national framework for conserving and managing the wealth of fishery resources found within the 197-milewide zone of Federal waters contiguous to the United States. To allow broad-based participation in the management process, the Act created eight regional fishery management councils (Councils) composed of state fishery managers, the regional NOAA Fisheries administrator, and qualified fishing industry, academic, and environmental representatives. Each Council has authority over the fisheries seaward of the states comprising it while NOAA Fisheries has management authority over most highly migratory species (e.g. swordfish) in the Atlantic ocean. The primary responsibility of the Councils is the development of fishery management plans that set the rules for each fishery and meet national conservation and management standards established in the Act.

Over the years, the Magnuson-Stevens Act has changed and evolved through several reauthorizations. In 1996, Congress ushered in a new era in fisheries management, making significant revisions to the Magnuson-Stevens Act in the Sustainable Fisheries Act (SFA). The SFA addresses a number of conservation issues. First, to prevent overfishing and rebuild depleted fisheries, the SFA caps fishery harvests at the maximum sustainable level and requires fishery management plans to rebuild any overfished fishery. NOAA Fisheries reports annually on the health of marine fisheries and identifies fisheries that are overfished or approaching an overfished condition. Second, the SFA sets a new direction for fisheries management that focuses on protecting fisheries habitat. To enhance this goal, the SFA requires that management plans identify habitat that is necessary to fish for spawning, feeding or growth. The new law also clarifies our existing authority to comment on Federal actions that affect essential fish habitat. Third, to reduce bycatch and waste, the SFA adds a new national standard requiring that conservation and management measures minimize bycatch and the mortality of bycatch that cannot be avoided. It also calls for management plans to assess bycatch and to take steps to reduce it.

The new conservation requirements may have far-reaching effects on recreational and commercial fishing and on fishermen, their families and communities. To address this concern, the SFA establishes a new national standard which requires, consistent with conservation objectives, that fishery management plans ensure sustained participation of fishing communities and minimize adverse impacts. In addition, a national standard has been added on promoting the safety of human life at sea. Finally, the SFA provides a number of new tools for addressing problems relating the transition to sustainable fisheries, including amendments to provide for disaster relief, fishing capacity reduction programs, vessel financing, and grants and other financial assistance.

Implementation of the Sustainable Fisheries Act

NOAA Fisheries takes seriously its new mandates under the SFA. We are continuing to work to ensure that SFA requirements are implemented, and that conservation and management measures fully protect the resource and provide for the needs of fishing communities and the Nation. A great deal of work remains to be done. We are laying a better foundation for future fisheries management, yet the benefits of the changes made by Congress in 1996 will take years, perhaps decades, to realize. In addition, the management decisions that we face are becoming ever more complex and contentious, and good solutions are hard to come by. We need to direct resources and effort to the scientific and technical aspects of our work. We also must build consensus with the public and among various stakeholders to facilitate progress in developing management programs that will move us toward the goal of healthy and sustainable marine resources.

Regulations and guidelines. Nearly all of the regulations and policy guidance related to SFA implementation (other than implementing regulations for plan amendments) have been developed and published. These regulations and guidelines address such issues as foreign processing in internal waters, observers' health and safety, procedures for monitoring recreational fisheries, Secretarial emergency actions, and negotiated rulemaking. Proposed regulations for carrying out fishing capacity reduction programs were published in January 1999; final regulations currently are under review in the agency clearance process. However, sectors of the

fishing industry that are interested in pursuing buyouts can proceed with the development of buyout plans while this rule is being finalized.

The national standard guidelines were one important area where substantial revisions were necessary because of the significant changes made by the SFA. The national standards are the guiding principles for the management of our Nation's fishery resources, and any management plans or associated regulations prepared by either the Secretary or the Councils must satisfy the criteria which they establish. The Magnuson-Stevens Act requires that the Secretary prepare advisory guidelines on their application to assist in the development of management plans. The guidelines build on the national standards, providing more detailed advice for plan development and a guide to the Secretary in the review and approval of proposed plans and regulations. They were revised to reflect the changes made by the SFA and published as a final rule in May 1998. The final rule addresses the need to end overfishing, reduce bycatch and rebuild stocks, emphasizing use of the precautionary approach. It adds important guidelines on evaluating impacts on fishing communities, and provides guidelines to enhance safety at sea.

Among the changes made by the SFA, one of the most important may be a strengthened standard for preventing overfishing accomplished by revising the definition of terms used in National Standard 1. The effect of this revision is to cap the optimum yield from a fishery at the maximum sustainable yield (MSY) and require all stocks to be rebuilt to and maintained at levels consistent with MSY. In addition, fishery management plans must establish clear criteria for determining when overfishing of a stock is occurring. NOAA Fisheries has worked with the Councils to develop an understanding of the new requirements to prevent overfishing. The Councils, in turn, have worked hard to develop new overfishing definitions, management programs to achieve the revised goals, and rebuilding programs where stocks were found to be overfished. This has proven to be a very difficult task—in part because of the complex biological structure of fisheries and complicated calculations of MSY and other fishery parameters—but also because of the necessity to consider impacts on fishermen and dependent communities while achieving conservation goals.

The Act calls for ending overfishing and rebuilding the fishery in the shortest time possible, taking into account a number of factors and within 10 years except under certain circumstances. As a result, the national standard guidelines allowed the Councils to take into account potential impacts on the industry or communities to extend the rebuilding period up to the 10-year limit, even when the stock could otherwise be rebuilt in a much shorter period. For long-lived and slow-maturing species like red snapper, the rebuilding period may be as long as the time it would take the stock to rebuild without any fishing plus a period equal to the species generation time. This solution balances the need to meet the conservation requirements within a reasonable period while minimizing effects on the industry and dependent communities.

Another significant change that resulted from passage of the SFA is the increased emphasis of the Magnuson-Stevens Act on conserving and enhancing essential fish habitat (EFH). NOAA Fisheries published a proposed rule in April 1997 for the implementation of the EFH provisions of the SFA, and an interim final rule in December 1997. The extended timeframe was necessary so that all interested groups and individuals had ample opportunity for comments on the rulemaking. These rules establish guidelines to assist the Councils and the Secretary in the description and identification of EFH in fishery management plans, including identification of adverse impacts on such habitat from fishing and identification of other actions to encourage conservation and enhancement of EFH. The rule also provides procedures for EFH consultations on actions that may adversely affect EFH. The interim final rule became effective in January 1998, and is treated as final for the purposes of implementing the EFH provisions. We currently are reviewing the comments received on the interim final rule and plan to issue a final rule early next year. This will enable us to benefit from experience with EFH consultations with other Federal agencies and from the practical experience we will have gained from the first round of fishery management plan amendments on EFH. To date, NOAA Fisheries has conducted over 400 consultations with Federal agencies whose actions may adversely affect EFH. We have completed seven agreements with other Federal agencies to establish specific procedures for using existing environmental review processes (e.g., NEPA) to handle EFH consultations, and we are working on 36 more. Federal agencies have been generally receptive to the new consultation requirements and have begun responding to NOAA Fisheries EFH conservation recommendations, as mandated by the Magnuson-Stevens Act. We expect consultations to increase as outreach efforts with Federal agencies continue to build awareness of the EFH statutory requirements.

Turning to Council operations, Council members currently are exempt from conflict-of-interest provisions of the criminal code, as long as they are in compliance with the financial disclosure requirements of the Magnuson-Stevens Act. Concern that these provisions were not adequate to prevent the financial interests of Council members from influencing the decision making process led to their revision in the SFA. As a result, NOAA Fisheries prepared regulations that prohibit Council members from voting on matters that would have a significant and predictable effect on any personal financial interests disclosed in accordance with existing regulations.

Amending fishery management plans to meet SFA requirements. In addition to revising the national standards, the SFA established a number of other new requirements for fishery management plans that necessitate their amendment. NOAA Fisheries and the Councils have made dedicated efforts to meet most SFA deadlines for 121 major activities and approximately 400 separate tasks to bring fishery management plans into compliance with the new requirements. Commendably, this has been accomplished in a relatively short period of time. The SFA imposed a deadline of October 11, 1998 for amendments to each of the 39 existing fishery management plans to prevent over-fishing and rebuild overfished stocks descriptions and analysis of trends in landings for commercial, recreational and charter sectors; and assessment of effects on fishing communities. As of June 1999, 52 amendments were either approved or partially approved, another two amendments were under Secretarial review, and the remaining 13 amendments were scheduled to begin Secretarial review this summer. Despite the Council's best efforts there were some proposed amendments that did not satisfy the requirements, for which the analyses were inadequate, or that did not minimize socioeconomic or environmental impacts to the extent possible and achieve management objectives. NOAA Fisheries disapproved or partially approved those amendments and is working closely with the Councils to improve them, particularly in the areas of over-fishing definitions, bycatch reduction measures, and EFH identification and protection.

I cannot over-emphasize the critical role and contribution of the Councils in implementing the SFA and bringing Federal fishery management into compliance with its new requirements. The Councils have performed admirably over the years in developing plans, resolving conflicts among stakeholders, and making recommendations to the Secretary, particularly in light of the controversy and conflicts surrounding many fishery decisions. While both NOAA Fisheries and the Councils are adjusting to the changes made by the SFA, we remain committed to working together in the transition to sustainable fisheries.

Turning to the management of wide-ranging Atlantic fish like tunas and billfish, NOAA Fisheries has taken the lead in preparing management plans and rebuilding programs. Of these Atlantic highly migratory species (HMS), the following are currently classified as overfished: bluefin tuna, big eye tuna, Northern albacore tuna, swordfish, blue marlin, white marlin, and the 22 species that make up the large coastal shark management complex. Yellowfin tuna are fully exploited, with a fishing mortality rate that is probably above the levels that support the maximum sustainable yield. This past April, NOAA Fisheries completed a fishery management plan for Atlantic tunas, swordfish and sharks (HMS Plan) and an amendment to the billfish fishery management plan (Billfish Amendment) that contained rebuilding programs. Numerous and substantial changes were incorporated in the final rule to implement the HMS Plan and Billfish Amendment, based on the thousands of public comments received by the agency. Advisory Panels established under the SFA and composed of representatives of commercial and recreational fishing interests and other knowledgeable individuals, including members of the ICCAT Advisory Committee, participated in the development of the management measures. The final rule became effective July 1, 1999.

Improving technical and scientific information and analyses. Another initiative of the SFA was to establish a new title in the Magnuson-Stevens Act on fishery monitoring and research. NOAA Fisheries is committed to using the best possible science in the decision-making process, and to incorporating biological, social, and economic research findings into fisheries conservation and management measures. Meeting our responsibilities under the Magnuson-Stevens Act and other applicable laws requires collection of a considerable amount of data, and in many fisheries we do not have all the data we need. We will continue to support a precautionary approach in the face of scientific uncertainty. At the same time, we are expanding our collection efforts and, wherever we can, partnering with the states, interstate commissions, fishermen and others to collect and analyze critical data. In addition, we are using a variety of methods to improve public input in the management process and the availability of socioeconomic data to assess and minimize impacts to communities and small entities and to meet the requirements of other applicable laws such as the Regulatory Flexibility Act.

Despite these efforts, we are vulnerable to overlooking or accepting alternatives with unanticipated effects, due to the limitations of our models and underlying data. NOAA Fisheries is addressing this vulnerability by placing a high priority on using funds to fill in gaps, particularly in the area of economic and social data collection and analysis. In January of this year, NOAA Fisheries delivered a Report to Congress entitled Proposed Implementation of a Fishing Vessel Registration and Fisheries Information System that calls for innovative state-Federal partnerships to improve the quality and quantity of information for marine resource stewardship. Such Federal-state partnerships are an important mechanism for sharing resources and reducing duplicative efforts.

Just as important as the collection of timely and complete data is sophisticated modeling to analyze the complex interactions between management measures and various impacts. State-of-the-art modeling techniques that incorporate information from the biological and social sciences, for instance, would improve NOAA Fisheries' ability to make accurate predictions about economic impacts and benefits. As we improve our capabilities to conduct integrated analyses, scientific assessments of the effects of management decisions on both fish and fishermen will be enhanced. This information will enable managers to choose the alternative that best balances conservation needs and community impacts.

Reports to Congress. In addition to the data management report, the SFA required about 20 other studies and reports to Congress that address many critical issues in fisheries management. We will be using the findings and recommendations of these reports to improve our conservation and management programs. They also contain a great deal of useful information that could inform and guide the reauthorization process.

One of the most thorough and interesting of these reports is the National Research Council's study, *Sharing the Fish: Toward a National Policy on Individual Fishing Quotas* (IFQs), an examination of the issues surrounding the use of such quotas to manage fisheries. The report recommends that IF programs be retained as a fisheries management tool. It also contains a number of useful suggestions for developing potential ground rules for and key elements of IFQ programs if they are authorized.

Another NRC report, *The Community Development Quota Program in Alaska*, highlighted some of the current successes of existing CDQ programs, and recommended expanding the programs over the long term to ensure overall success in meeting a variety of community development goals. We look forward to transferring some of the lessons learned to future programs.

Earlier this month, the Federal Fisheries Investment Task Force released its report analyzing the Federal role in subsidizing expansion and contraction of fishing capacity. We will be looking closely at the recommendations in the report, including those that propose to rework existing programs and develop new funding mechanisms, to address problems of overcapacity and resource degradation.

The National Research Council's report entitled *Sustaining Marine Fisheries and the Ecosystem Principles Advisory Panel's Ecosystem-Based Fishery Management Report to Congress* both advocate greater use of the precautionary approach and an ecosystem-based approach to management. In the latter report, the authors maintain that the burden of proof must shift to the fishery to ensure that the ecosystem will not be harmed by fishing. They also suggest that we develop indices of ecosystem health as targets for management. We will be looking to these reports and others for ideas as we continue to move toward ecosystem-based fisheries management.

Reauthorization Issues

We are still working to understand and effectively implement the changes to fishery management policies and procedures made by the SFA. Consequently we would not propose major changes to the Magnuson-Stevens Act at this time. However, we have established an internal agency task force to evaluate SFA implementation, and the group has identified some revisions of existing provisions that may be useful to make the management process more efficient and to resolve some relatively minor problems. We currently are reviewing various issues raised by the task force. We currently are reviewing various issues raised by the task force, the Councils, and some of our stakeholders. Among the issues identified are the following:

Review process for fishery management plans, amendments and regulations. The SFA attempted to simplify and tighten the approval process for management plans and regulations. However, one result of that effort has been two distinct review and implementation processes—one for plans and amendments and another for implementing regulations. This essentially uncouples the process for plans and amendments from the process for regulations, and as a result the decision to ap-

prove or disapprove a plan or amendment may be necessary before the end of the public comment period on the implementing regulations. This prevents agency consideration of public comments that could be germane to the decision on plan or amendment approval. We are considering amendments that would modify the process to address this issue.

In addition, the Committee may wish to consider reinstating the initial review of FMPs and FMP amendments by the Secretary. Considerable energy and staff resources are expended on plans or amendments that are ultimately disapproved because of serious omissions and other problems. At present, two to three months must elapse before the Secretary makes his determination, and if the amendment is then disapproved, it can be months or longer before the Council can modify and resubmit the plan or amendment. While the initial review was eliminated by the SFA to shorten the review process, it actually may provide a mechanism to shorten the time it takes to get a plan or amendment approved and implemented.

Restrictions on data collection and confidentiality. As I indicated in the April hearing on this topic, the Magnuson-Stevens Act currently restricts the collection of economic data from processors. Removal of this restriction could improve the quantity and quality of information available to meet the requirements of the Regulatory Flexibility Act and other laws requiring economic analysis. In addition, the SFA changed the term "statistics" to "information" in the provisions dealing with data confidentiality. The change has raised questions about the intended application of those provisions, particularly with respect to observer information, and Congressional clarification would be useful.

Coral reef protection. Special management areas, including those designated to protect coral reefs, hard bottoms, and precious corals, are important commercial resources and valuable habitats for many species. Currently, we have the authority to regulate anchoring and other activities of fishing vessels that affect fish habitat. Threats to those resources from non-fishing vessels remain outside agency authority except when associated with a Federal action that would trigger EFH consultation or where addressed in regulations associated with a national marine sanctuary. We suggest amending the Act to clarify, consolidate, and strengthen NOAA Fisheries' authority to regulate the actions of any recreational or commercial vessel that is directly impacting resources being managed under the Magnuson-Stevens Act.

Caribbean Council jurisdiction. The current description of the Caribbean Council limits its jurisdiction to Federal waters off Puerto Rico and the U.S. Virgin Islands. As a result, the Council cannot develop FMPs governing fishing in Federal waters around Navassa Island or any other U.S. possession in the Caribbean. Jurisdiction of the Caribbean Council could be expanded to cover Navassa Island, by including "commonwealths, territories, and possessions of the United States" within the description of that Council's authority.

Council meeting notification. Pursuant to the notification requirements of the Magnuson-Stevens Act, Councils spend tens of thousands of dollars a year to publish meeting notices in local newspapers in major and/or affected fishing ports in the region. By contrast, e-mail, public service announcements, and notices included with marine weather forecasts are much cheaper and could be more effective in reaching fishery participants and stakeholders. The Committee may wish to consider modifying notification requirements to allow Council use of any means that will result in wide publicity.

We also look forward to working with the Committee on high-priority policy issues such as observer programs, individual transferable quotas, and funding and fee authorities. We appreciate the concern of the Congress and industry regarding the Administration's fee proposal, and NOAA is interested in working with all relevant parties to develop a viable fee proposal. However, at this time, we have no specific recommendations for changes in the Act to address these issues.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to discuss the implementation and reauthorization of the Magnuson-Stevens Act. I am prepared to respond to any questions members of the Subcommittee may have.

Mr. SAXTON. Thank you very much, Ms. Dalton.
Mr. Brancaleone.

STATEMENT OF CHAIRMAN, NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Mr. BRANCALEONE. Thank you. On behalf of myself and the seven other council chairmen, I would like to thank the members of the Subcommittee for the opportunity to present our views.

First, let me say that the council chairmen believe that the Magnuson-Stevens Act, as amended in 1996, is a good piece of legislation, and it is working. Many of our most important fisheries are prospering, and we are now seeing significant improvements in a majority of the over-fished stocks under management.

The changes we suggest are not substantial, but we believe that they will serve to enhance and improve the Act. The points I make in this presentation concern only the reauthorization issues on which the chairs have reached consensus. I believe that individual councils have positions on additional topics which I am sure they will communicate as the reauthorization process moves forward.

On the issue of rescinding the Congressional prohibitions on IFQs or ITQs, currently Section 303(d)(1) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits a council from submitting, or the Secretary from approving, an Individual Fishing Quota system before October 1 of the year 2000. Section 407(b) prohibits the Gulf Council from undertaking or continuing the preparation of a red snapper IFQ program or any system that provides for the consolidation of permits to create different trip limits for vessels in the same class before October 1 of the year 2000.

If the reauthorization process is completed in 1999, the council chairmen support rescinding these provisions before the year 2000 deadline. The chairmen also oppose extending the moratorium on IFQs.

On the issue of establishing fees, the council chairmen are opposed to the imposition of fees that are not regional in nature and dedicated by the councils; and are concerned, deeply concerned, about the ability of depressed fleets to pay these fees. However, we do support the National Academy of Sciences' recommendation that Congressional action allow councils maximum flexibility in designing IFQ systems and allow flexibility in setting those fees to be charged for initial allocations, first sale, and leasing of IFQs.

Coordinated review and approval of plans and their amendments and regulations: The Sustainable Fisheries Act amended Sections 304(a) and (b) of the Act to create separate sections for the review and approval of plans and amendments, and for review and approval of regulations. Accordingly, the approval process for these two actions now proceeds on separate tracks, rather than concurrently.

The SFA also deleted the 304(a) provision allowing disapproval or partial disapproval of an amendment within the 15 days of transmission. The council chairmen recommend modification of these provisions to include the original language allowing concurrent approval of plans and amendments, as well as regulations providing for the initial 15-day disapproval process. The councils would also like the ability to resubmit responsive measures without having to submit a complete fishery management plan or amendment, as now required by subsection (4) of Section 304(a).

On the issue of regulating non-fishing activities of vessels, the council chairmen recommended that Section 303(b) of the Act be amended to provide authority to councils to regulate non-fishing activities by vessels that adversely impact fisheries or essential fish habitat. One of the most damaging activities to such habitat is the anchoring of large vessels near habitat areas of particular concern

or other essential fish habitat; for example, the coral reefs. When ships swing on the chain deployed for anchoring in 100 feet of water, 20 to 70 acres of bottom may be plowed up by the chain dragging over the bottom. Regulation of this type of activity by the councils should be allowed.

On the issue of collection of economic data, language throughout the Magnuson-Stevens Act specifies the collection of biological, economic, and socio-cultural data to meet specific objectives of the Act, for the fishery management councils to consider this information in their deliberations.

However, Section 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes councils from collecting proprietary or confidential commercial or financial information. The National Marine Fisheries Service should not be precluded from collecting such proprietary information, so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analyses of fishery management regulations are not possible, preventing NMFS and the councils from satisfying the requirements of the Act and the Regulatory Flexibility Act. These inconsistencies should be resolved.

The chairmen recommend amending the Magnuson-Stevens Act to eliminate the restrictions of the collection of economic data. Amending Section 303(b)(7) by removing the words "other than economic data" will allow NMFS to require fish processors who first receive fish that are subject to a plan to submit economic data. Removing this current restriction will strengthen the ability of the National Marine Fisheries Service to collect necessary data, and eliminate the appearance of a contradiction in the law requiring economic analysis without allowing collection of the necessary data.

On the issue of confidentiality of information, Section 402 replaced and modified former Sections 303(d) and (e). The Sustainable Fisheries Act replaced the word "statistics" with the word "information," expanded confidential protection from information submitted in compliance with the requirements of an FMP to information submitted in compliance with any requirement of the Act, and it broadened the exceptions to the confidentiality to allow for disclosure in several new circumstances.

The following draft language clarifies the word "information" in 402(b)(1) and (2) by adding the same parenthetical used in (a), and deletes the provision about observer information. The revised section would read as follows:

Confidentiality of information:

(1) Any information submitted to the Secretary by any person in compliance with any requirements under this Act, and that would disclose proprietary and confidential commercial or financial information regarding fishing operations or fish processing operations, shall not be disclosed, except:

(A) To a Federal employee and to council employees who are responsible for fisheries management plan development and monitoring;

(B) To state or Marine Fisheries Commission employees, pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) When required by a court order;

(D) When such information is used to verify catch under an individual fishing quota program; or

(E) When the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement under this law—And we would also add:

“—and that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or with the approval of the Secretary, the council, of any information submitted in compliance with any requirement or regulation under the Act, or the use, release, or publication of bycatch information pursuant to Paragraph (1)(E).”

On the issue of enforcement, the council chairmen support the implementation of cooperative state-Federal enforcement programs patterned after the National Marine Fisheries Service and South Carolina enforcement cooperative agreement. While it is not necessary to amend the Act to establish such programs, it is consistent with the changes needed to enhance management under the Act to suggest to Congress that they consider establishing and funding such cooperative state and Federal programs.

On the issue of council member compensation, the Act should specify that council member compensation be based on the general schedule that includes locality pay. This action would provide for a more equitable salary compensation.

Salaries of members serving in Alaska, the Caribbean, and Western Pacific are adjusted by a cost of living adjustment. The salary of the Federal members of the councils includes locality pay. The Department of Commerce has issued a legal opinion that prohibits council members in the continental U.S. from receiving locality pay. Congressional action, therefore, is necessary.

Observer programs: The chairmen reaffirm their support to give discretionary authority to the councils to establish fees to help fund observer programs. The authority would be the same as granted to the North Pacific Council under Section 313 for observers.

Essential fish habitat: The 1996 Act required the councils to identify and describe essential fish habitat, but gave little direction on how to designate EFH. The EFH definition—for example, “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity”—allows for a broad interpretation.

The EFH interim final rule encouraged councils to interpret data on relative abundance and distribution for the life history stages of each species in a risk-averse manner. This led to EFH designations

that were criticized by some as too far-reaching. “If everything is designated as essential, then nothing is essential,” was a common theme throughout the EFH designation process, on a national and regional scale. Either the EFH definition should be modified, or the guidance on how to use different types of data should be more specific.

On the issue of rebuilding periods, the councils should have greater latitude for specifying rebuilding periods than is provided under the National Standard Guidelines. Social and economic factors should be given equal or greater consideration in determining the schedules that result in the greatest overall net benefit to the nation.

Redefine “Over-fishing”: The chairmen believe that there are a number of problems related to MSY-based definitions of over-fishing. For example, data deficiencies may lead to inappropriate calculations of MSY, which in turn affect over-fishing definitions. Ultimately, this could lead to unnecessary social and economic impacts for fishermen who are subject to measures that are tied to stock rebuilding schedules.

While we have no specific recommendations at this time, we would like to work further with the Subcommittee in seeking solutions to our concerns as the reauthorization process proceeds. This is an extremely important issue to the councils, but through our conversations with the National Marine Fisheries Service staff we appreciate that there are varying viewpoints to be considered before we are able to present clear, concise, and productive recommendations on what is the foundation of the SFA.

Receive funds from any state or Federal Government organization: Currently, councils can only receive funds through the Department of Commerce, NOAA, or the National Marine Fisheries Service. The councils routinely work with other government organizations to support research, workshops, conferences, or to procure contractual services.

In a number of cases, complex dual contacts, timely pass-throughs, and unnecessary administration and grant oversight were required to complete the task. The councils request a change that would give them authority to receive funds or support from other local, state, and Federal Government agencies and non-profit organizations. This would be consistent with Section 302(f)(4) that requires the Administrator of General Services to provide support for the councils.

On the issue of bycatch, the appears to be an inconsistent definition of “bycatch,” depending on geography. In the Atlantic, highly migratory species harvested in catch-and-release fisheries managed by the Secretary under 304(g) of the Magnuson-Stevens Act or the Atlantic Tunas Convention Act, are not considered bycatch; but in the Pacific, they are.

We suggest that highly migratory species in the Pacific, managed under the Western Pacific Council fisheries management plan and tagged and released alive under scientific or recreational fishery tag-and-release programs, should not be considered bycatch.

Note that there are also inconsistencies between the Magnuson-Stevens Act definition of “bycatch” and the NMFS Bycatch Plan. The NMFS definition is much broader, and includes marine mam-

imals and birds and retention of non-targeted species. The council chairmen prefer the Magnuson-Stevens Act definition. We also wish to retain turtles in the definition of “fish,” because of their importance in every region, and especially in the past and possible future fisheries pursued by indigenous peoples of the Western Pacific Region.

The chairmen believe that the National Marine Fisheries Service in its review of proposed plans, amendments, and framework adjustments, has failed to adequately communicate to the councils perceived problems in a timely manner. We propose the inclusion of a mandate in the Act to require the National Marine Fisheries Service to consult with the councils before disapproving fisheries management plans, amendments, or changes made through the abbreviated rulemaking process.

NMFS regional administrator emergency action vote: For the purpose of preserving the Secretary’s authority to reject a council’s request for emergency or interim action, the NMFS regional administrator is currently instructed to cast a negative vote, even if he or she supports the action.

While we recognize the extreme sensitivity in recommending a change in the voting responsibilities of our partners in the National Marine Fisheries Service—we certainly do not wish to appear disparaging to the regional administrators in any way—the council chairmen believe that Congressional intent is being violated by this policy.

We instead suggest a modification to the language of Section 305(c)(2)(A) as follows:

“(A) The Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or over-fishing if the council, by unanimous vote of its members, excluding the NMFS regional administrator, who are voting members, request the taking of such action——” and so forth.

The Mid-Atlantic At-Large Seat: The council chairmen recommend that an additional at-large seat be added to the Mid-Atlantic Fishery Management Council, along with the funding identified for that purpose. Such a seat would most likely be filled by an individual from the State of North Carolina. This would allow the state to have both recreational and commercial representatives on the Mid-Atlantic Fishery Management Council.

Mr. Chairman, I would like to thank you for this opportunity to comment on the Magnuson-Stevens Act. I am sorry for going over my time. And I will be happy to answer any questions, if I can. If not, I am sure I can get back to you with some answers. Thank you.

[The prepared statement of Mr. Brancalone follows:]

[The prepared statement of Mr. Brancalone follows:]

STATEMENT OF JOSEPH M. BRANCALONE, CHAIRMAN, NEW ENGLAND FISHERY
MANAGEMENT COUNCIL

On behalf of myself and the other seven Council Chairman, I would like to thank the members of the Subcommittee for the opportunity to present our views. First let me say the Council Chairmen believe the Magnuson-Stevens Act as amended in 1996 is a good piece of legislation and it is working. Many of our most important fisheries are prospering and we are seeing improvements in a majority of the over-

fished stocks under management. The changes we suggest are not substantial, but we believe they will serve to enhance and improve the Act. The points I make in this presentation concern only the reauthorization issues on which the chairs reached consensus. I believe individual Councils have positions on additional topics which I'm sure they will communicate as the reauthorization process moves forward. The Chairs discussed this document in a fair amount of detail at our meeting in late June. I'm happy to answer questions on any of the issues we covered or on issues of concern to the New England Council.

• Rescinding the Congressional Prohibitions on IFQs or ITQs

Currently Section 303(d)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (M-S Act) prohibits a Council from submitting or the Secretary from approving an Individual Fishing Quota (IFQ) system before October 1, 2000. Section 407(b) prohibits the Gulf Council from undertaking or continuing the preparation of a red snapper IFQ program or any system that provides or the consolidation of permits to create different trip limits for vessels in the same class before October 1, 2000. If the reauthorization process is completed in 1999, the Council chairmen support rescinding these provisions before the year 2000 deadline. The chairmen also oppose extending the moratorium on IFQs.

• Establishment of Fees

The Council chairmen are opposed to the imposition of fees that are not regional in nature and dedicated by the Councils, and are concerned about the ability of depressed fleets to pay fees. However, we do support the National Academy of Sciences recommendation that Congressional action allow the Councils maximum flexibility in designing IFQ systems and allow flexibility in setting the fees to be charged for initial allocations, first sale and leasing of IFQs [M-S Act Sections 303(d)(2-5) and 304(d)(2)].

• Coordinated Review and Approval of Plans and their Amendments and Regulations

The Sustainable Fisheries Act (SFA) amended Sections 304(a) and (b) of the MS Act to create separate sections for the review and approval of plans and amendments and for the review and approval of regulations. Accordingly, the approval process for these two actions now proceeds on separate tracks, rather than concurrently. The SFA also deleted the 304(a) provision allowing disapproval or partial disapproval of an amendment within the first 15 days of transmission. The Council chairmen recommend modification of these provisions to include the original language allowing concurrent approval of plans and amendments as well as regulations and providing for the initial 15-day disapproval process. The Councils would also like the ability to resubmit responsive measures without having to submit a complete fishery management plan or amendment, as now required by subsection (4) of Section 304(a).

• Regulating Non-Fishing Activities of Vessels

The Council chairmen recommend that Section 303(b) of the Act be amended to provide authority to Councils to regulate non-fishing activities by vessels that adversely impact fisheries or essential fish habitat (EFH). One of the most damaging activities to such habitat is the anchoring of large vessels near habitat areas of particular concern (HAPQ or other EFH (e.g., coral reefs, etc.). When these ships swing on the chain deployed for anchoring in 100 feet, 20 to 70 acres of bottom may be plowed up by the chain dragging over the bottom. Regulation of this type of activity by the Councils should be allowed.

• Collection of Economic Data [Section 303(b)(7)]

Language throughout the M-S Act specifies the collection of biological, economic, and socio-cultural data to meet specific objectives of the Act and for the fishery management councils to consider this information in their deliberations. However, 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting "proprietary or confidential commercial or financial information." NMFS should not be precluded from collecting such proprietary information so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analyses of fishery management regulations are not possible, preventing WS and the Councils from satisfying—the requirements of the M-S Act and the Regulatory Flexibility Act (RFA). These inconsistencies should be resolved.

The chairmen recommend amending the M-S Act to eliminate the restrictions on the collection of economic data. Amending Section 303(b)(7) by removing "other than economic data" would allow NMFS to require fish processors who first receive fish that are subject to a plan to submit economic data. Removing this current restriction will strengthen the ability of NMFS to collect necessary

data and eliminate the appearance of a contradiction in the law requiring economic analyses without allowing collection of the necessary data.

• **Confidentiality of Information [Section 402(b)]**

Section 402 replaced and modified former Sections 303(d) and (e). The SFA replaced the word “statistics” with the word “information,” expanded confidential protection from information submitted in compliance with the requirements of an FMP to information submitted in compliance with *any* requirements of the Act and broadened the exceptions to confidentiality to allow for disclosure in several new circumstances.

The following draft language clarifies the word “information” in 402(b)(1) and (2) by adding the same parenthetical used in (a), and deletes the provision about observer information. The revised section would read as follows (additions in bold):

(b) **CONFIDENTIALITY OF INFORMATION—**

“(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act, and **that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations shall not be disclosed**, except—

A. to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

B. to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

C. when required by court order;

D. when such information is used to verify catch under an individual fishing ot program; or

when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.”

(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement under this Act, and that would disclose proprietary or confidential commercial or financial information regarding fishing operations, or fish processing operations, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

• **Enforcement**

The Council chairmen support the implementation of a cooperative state/Federal enforcement programs patterned after the NMFS/South Carolina enforcement cooperative agreement. While it is not necessary to amend the Act to establish such programs it is consistent with the changes needed to enhance management under the Act to suggest to Congress that they consider establishing and funding such cooperative state/Federal programs.

• **Council Member Compensation** The Act should specify that Council member compensation be based on the General Schedule at includes locality pay. This action would provide for a more equitable salary compensation. Salaries of members serving in Alaska, the Caribbean, and Western Pacific are adjusted by a COLA. The salary of the Federal members of the Councils includes locality pay. The Department of Commerce has issued a legal opinion that prohibits Council members in the continental U.S. from receiving locality pay. Congressional action, therefore, is necessary.

• **Observer Program**

The chairmen reaffirm their support to give discretionary authority to the Councils to establish fees to help fund observer programs. This authority would be the same as granted to the North Pacific Council under Section 313 for observers.

• **Essential Fish Habitat**

The 1996 Act required the Councils to identify and describe EFH, but gave little direction on how to designate EFH. The EFH definition, i.e., “those waters and substrate necessary to fish for spawning, breeding, feeding or to maturity,” allows for a broad interpretation. The EFH Interim Final Rule encouraged Councils to interpret data on relative abundance and distribution for the life history

stages of each species in a risk-averse manner. This led to EFH designations that were criticized by some as too far-reaching. “If everything is designated as essential then nothing is essential,” was a common theme throughout the EFH designation process, on a national and regional scale. Either the EFH definition should be modified, or the guidance on how to use different types of data should be more specific.

•Rebuilding Periods

The Councils should have greater latitude for specifying rebuilding periods than is provided under the National Standard Guidelines. Social and economic factors should be given equal or greater consideration in determining schedules that result in the greatest overall net benefit to the Nation.

•Redefine “Overfishing”

The chairmen believe there are a number of problems related to MSY-based definitions of overfishing. For example, data deficiencies may lead to inappropriate calculations of MSY, which in turn affect overfishing definitions. Ultimately, this could lead to unnecessary social and economic impacts for fishermen who are subject to measures that are tied to stock rebuilding schedules. While we have no specific recommendations at this time, we would like to work further with the Subcommittee in seeking solutions to our concerns as the reauthorization process proceeds. This is an extremely important issue to the Councils but, through our conversations with NMFS staff, we appreciate that there are varying viewpoints to be considered before we are able to present clear, concise and productive recommendations on what is the foundation of the SFA.

•Receive Funds from any State or Federal Government Organization

Currently Councils can only receive funds through the Department of Commerce, NOAA or NMFS. The Councils routinely work with other government organizations to support research, workshops, conferences or to procure contractual services. In a number of cases, complex dual contacts, timely pass-throughs and unnecessary administration or grant oversight were required to complete the authority to receive funds or support from other local, state and Federal Government agencies and non-profit organizations. This would be consistent with Section 302 (f)(4) that requires the Administrator of General Services to provide support to the Councils.

•Bycatch Issues

There appears to be an inconsistent definition of bycatch, depending on geography in the Atlantic, highly migratory species harvested in catch and release fisheries managed by the Secretary under 304(g) of the Magnuson Stevens Act or the Atlantic Tunas Convention Act are not considered bycatch, but in the Pacific they are. We suggest that highly migratory species in the Pacific, managed under a Western Pacific Council fishery management plan and tagged and released alive under a scientific or recreational fishery tag and release program, should not be considered bycatch.

Note that there also is an inconsistency between the Magnuson-Stevens Act definition of bycatch and the NMFS Bycatch Plan. The NMFS definition is much broader and includes marine mammals and birds and retention of non-target species. The Council chairmen prefer the Magnuson-Stevens Act definition. We also wish to retain turtles in the definition of “fish” because of their importance in every region and especially in past and possibly future fisheries pursued by indigenous peoples of the Western Pacific Region.

•FMP Review Program

The chairmen believe that NMFS, in its review of proposed plans, amendments and framework adjustments, has failed to adequately communicate to the Councils perceived problems in a timely manner. We propose the inclusion of a mandate in the Act to require that NMFS consult with the Councils before disapproving fishery management plans, amendments or changes made through the abbreviated rule-making process.

•NMFS Regional Administrator Emergency Action Vote

For the purpose of preserving the Secretary’s authority to reject a Council’s request for emergency or interim action, the NMFS Regional Administrator is currently instructed to cast a negative vote even if he/she supports the action. While we recognize the extreme sensitivity in recommending a change to the voting responsibilities of our partners in the National Marine Fisheries Service—we certainly do not wish to appear to be disparaging the Regional Administrators in any way—the Council chairmen believe that Congressional intent is being violated by this policy. We instead suggest a modification to the language of Section 305(c)(2)(A) as follows (new language in bold):

(A) The Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by

unanimous vote of the members (excluding the NMFS Regional Administrator) who are voting members, requests the taking of such action; and . . .

•MAFMC At-Large Seat

The Council chairmen recommend that an additional At-Large seat be added to the Mid-Atlantic Fishery Management Council (MAFMC) along with funding identified for that purpose. Such a seat would, most likely, be filled by an individual from the state of North Carolina. This would allow the state to have both a recreational and commercial representative on the MAFMC.

Mr. Chairman, I would like to thank you for this opportunity to comment on the Magnuson-Stevens Act reauthorization. As I mentioned earlier, I'm also happy to answer questions or provide further information about the positions taken by the Council chairmen.

Mr. SAXTON. May I just ask you to elaborate on the last point that you made relative to the change that you are suggesting with regard to the relationship between NMFS and the councils?

Mr. BRANCALEONE. The last point? You mean the regional administrator?

Mr. SAXTON. About emergency action.

Mr. BRANCALEONE. Yes. There have been many times where everyone sitting around the table at a council meeting feels that an emergency action or an interim action is very important in the process. The regional administrator is directed to vote "No," to save the integrity of the Secretary, in the event that the Secretary wishes to disagree. However, there are times when—

Mr. SAXTON. So there is a standing policy—I am sorry; I did not mean to interrupt you, but I want to understand this.

Mr. BRANCALEONE. Sure.

Mr. SAXTON. There is a standing policy within NMFS that the Secretary's representative is instructed to vote "No"?

Mr. BRANCALEONE. That is my understanding, Mr. Chairman. I may be corrected. But that is the usual case at every council meeting around the country.

Mr. SAXTON. That seems kind of strange.

Ms. DALTON. I think the concern is that if there is a unanimous vote, then the decision to ask for the emergency rule basically becomes binding. And the concern is that the council is, in some respects, an advisory body to the Federal Government. And there is concern that we retain the ability to go back and do the analysis and the determination on the emergency rule, without being bound by the law to go ahead in accepting the council's recommendation.

So the only time that that would apply is if there is a unanimous vote other than the regional administrator.

Mr. SAXTON. But is it so that there is a policy statement that instructs the representative to vote "No" in these emergency cases?

Ms. DALTON. I do not know if there is a formal statement. And we can find out about that. But I think it has been a longstanding kind of informal policy. And the concern is to retain the flexibility.

Mr. SAXTON. OK. We understand. I am not sure we agree.

With regard to highly migratory species, Ms. Dalton, the long-line fishery, if you will—or the long-line gear, I guess is the correct way to say it. There has been, both within the long-line gear industry, as well as in the sport fishing, recreational industry, a growing desire to put in place a buy-out program for long-liners.

And over the last several years, this has been something that has been of great interest to me. And our staff has worked very closely with me in monitoring the various steps along the way to get there.

First, we needed to have you folks put in place a limited entry plan, which I understand has now been done; to be followed, I thought, or hoped—still do—by a buy-out program.

Now, your agency has stated that you do not think you have the statutory authority to implement a buy-out program. And I find that curious, because we think you do have the statutory authority. Can you explain your position?

Ms. DALTON. OK. I have one request. My deputy administrator is here, Dr. Andy Rosenberg, and I want to see if he could join me at the table.

Mr. SAXTON. He is welcome.

Ms. DALTON. Thanks. On that issue, I think there is a question. There are specific provisions that apply to highly migratory species, and they are done—At least on the Atlantic side, they are done by the Secretary, rather than by the councils.

The question that has come up is really a technical drafting issue, in the way that the buy-back provisions are written; in that it is drafted as a request from the council. And the Secretary is not mentioned in the initial provisions.

So it is not really a policy issue. I think we would be supportive of doing a buy-out program. There is the question of whether that legal authority needs to be clarified in the Magnuson-Stevens Act before we can move forward with it.

Mr. SAXTON. Do these need some technical changes?

Ms. DALTON. Yes, that would be one way to handle it, would be to do the technical changes.

Mr. SAXTON. Do you have to have the technical changes in order to proceed?

Ms. DALTON. We are not sure right now. I mean, it has been a question that we have been discussing.

Mr. SAXTON. I think Mr. Rosenberg would like to speak.

Ms. DALTON. Sure.

Mr. ROSENBERG. Thank you, Mr. Chairman. I think we are trying to determine whether to conclude the process we would need those technical changes. But we have been working intensively with the industry, providing as much information as we can, so that we are not waiting for that determination on technical changes.

We are trying to move forward with all aspects, as far as we can. And we have had staff working with industry to try to develop what the industry proposal would be, the industry including recreational proposal would be, for a buy-out program, while we try to sort out those technical details.

Mr. SAXTON. Can you describe where you think you are currently in the process?

Ms. DALTON. We recently released information that was requested by the long-line fishery, an analysis that was done by our Southeast Region and Center, to the industry. One of the issues is that they are interested in dealing with it legislatively. And so if we deal with it legislatively, we would need to wait for that legislative proposal to move on through. There is no funding in the budget for doing it. Right now, what we have been doing is trying to provide them with the support that they would need to develop a proposal.

Mr. SAXTON. Well, this is kind of surprising to me. We have been avoiding the legislative route, because we thought you were going to do it. And until you and I entered into this conversation, right up until now, I thought you were going to proceed—I thought that NMFS was going to proceed to implement the buy-back program. Is that not the case? I mean, you just said that you are waiting for us to do it legislatively?

Ms. DALTON. Well, there has been draft legislation. I do not know that it has primarily been—There is a draft bill that Senator Breaux was working on. We have kind of gotten mixed signals.

I think we are willing to work with the industry and proceed however folks want to proceed with it. At least some indication that we had gotten is that there was interest at least on the Senate side in doing it legislatively.

Mr. SAXTON. Well, that is fine. I have no problem with doing it legislatively.

Ms. DALTON. Yes.

Mr. SAXTON. But as I just said, we have been sitting, waiting for you to do it, because we thought you were going to. A, we thought you had the authority; you are not sure. B, we have been literally waiting for the proposal to come down; and it is surprising to hear that you are waiting, or counting on us.

Ms. DALTON. Well, no, I think we have been counting on the industry to fully develop their proposal more.

Mr. SAXTON. Let me move to a different question. The eight regional fishery management councils have taken action to describe and identify essential fish habitat by amending the fisheries management plans, FMPs, under their jurisdiction. In some cases, the entire coastline of an area under the council's jurisdiction has been designated as essential fish habitat.

Did NMFS give the councils adequate guidance in developing the essential fish habitat amendments to their fisheries management plans? I guess you can both respond to that.

Ms. DALTON. I think we felt that it was the guidance that we could provide. The limitations on essential fish habitat are basically the limitations of our understanding. Very often, if you look at the definition—that is, the areas that are necessary for fish to spawn, grow, breed, or feed—then it does encompass very large areas offshore of the ocean.

The other thing that we anticipate is, as we get more information and begin to develop information on essential fish habitats, that these will be able to identify the areas that really are critical to the continued productivity of the fisheries.

Mr. SAXTON. Now, I understand that you have another definition, known as “habitat areas of particular concern”? Is that right?

Ms. DALTON. Do you want to answer that?

Mr. ROSENBERG. Yes, Mr. Chairman, it is. And we have encouraged the councils to identify habitat areas of particular concern, so that we can focus our attention on those areas that we currently know, or believe, are truly critical. That helps us prioritize our work with regard to essential fish habitat.

So the EFH designation is very broad. We have asked wherever possible, when we have good information, to identify additionally habitat areas of particular concern, so that we can focus attention.

Mr. SAXTON. Mr. Rosenberg, we were aware that you had the authority to identify essential fish habitat. And frankly, what we envisioned 3 years ago was something a little different than what actually occurred. We thought you were going to identify habitat for a species—bluefish, for example, in the Northeast, or whatever species you want, redfish in the Gulf of Mexico, et cetera.

The maps that we have here indicate that the entire East Coast and around the tip of Florida into the Gulf of Mexico is essential fish habitat; looks like it is several hundred miles offshore, I guess.

And in the case of Alaska, which has drawn concern from at least one Member of Congress—

[Laughter.]

Mr. SAXTON. [continuing] this area, the yellow area, is Alaska, and the red area surrounding it is essential fish habitat. And the entire Gulf of Mexico and the entire West Coast. So I guess our thought was that somebody in NMFS, in conjunction with the councils, would identify some special areas that were essential for various species, and identify some science to support those notions, and then outline some areas.

You know, if we had had this kind of a notion, we could have just said in the law that the coastal areas of the United States are essential fish habitat, because that is what you all did; or at least, that is what it looks like you did.

Mr. ROSENBERG. Mr. Chairman?

Mr. SAXTON. So that is premise No. 1. And premise No. 2, then, when we come to the designation of habitat areas of particular concern, I guess the second part of this question relative to this issue is, we did not know that we had given you the authority to make that separate designation.

So would you explain to us, on the one hand, the broad definition that you use for EFH, “essential fish habitat”; and then, where you get the authority to designate “habitat areas of particular concern”?

Mr. ROSENBERG. Mr. Chairman, with regard to the broad-scale nature of “essential fish habitat,” as Penny said a moment ago, some of this relates to the ability to determine what is truly essential, in terms of the scientific ability to do that. And we recognize that we would like to improve, greatly improve, our habitat science.

But I do need to point out that, for example, with bluefish, the area that you showed in your chart is in fact the migratory area that bluefish inhabit as juveniles and adults. And so it is difficult to say, “Well, even though they do inhabit that area, they do not really need to.” That is the scientific question you would have to answer, of how you could constrain the population without injuring the population.

So in many cases, we have looked at what has been the distribution of the stock: Where did they actually go? And once you overlap all the various fisheries that we have in the 39 fishery management plans, it does end up being very broad areas.

We did believe that we have the authority, previous authority, in our consultations on habitat concerns prior to the amendments in 1996, to identify habitat areas of particular concern. And the intent there on the part of the agency was to do as you have suggested, and that is focus on those areas that we truly know are essential for a particular stock or species; not to complicate the picture, but

to make sure that the councils who are asked to make these identifications, proposals, for us, can tell us what they think the highest priority areas are for habitat protection, because of the broad-scale nature.

Unfortunately, you know, the answer is that fish live in most of the coastal waters. And it is difficult to decide that a particular area is not really needed for a given stock, if it has historically inhabited that area.

Mr. SAXTON. Mr. Rosenberg, can you explain what type of regulatory measures NMFS envisions in implementing these special areas?

Mr. ROSENBERG. We do not have additional regulatory authority under the essential fish habitat provisions, but the councils, in considering those areas, may decide that they want to, through their fishery management regulation recommendations, focus attention on habitat areas of particular concern. And that is something that the councils have done in a number of cases.

As I believe Mr. Brancalone pointed out, the councils are concerned in some cases that when they have focused fishery regulations on a particular area of special concern, like a coral reef, they and we do not have the authority to deal with other impacts, such as anchoring and shipping. So our intent there is to, again, provide a mechanism by which in regulation we can consider whether fishery regulations are needed for those areas; and in consultation on essential fish habitat with other agencies, we can advise them of what truly we think are the most important problems, based on current information, as opposed to more general concerns about impacts on broad-scale habitat.

Ms. DALTON. Just as an additional point, our gear restrictions primarily occur in the habitat areas of particular concern. We also have more of a tendency to use retention restrictions there, too. So they have been used as a regulatory mechanism.

Mr. SAXTON. Thank you. Mr. Faleomavaega has joined us, of course. And I would like to ask unanimous consent at this point that his statement be included in the record at the beginning of the hearing, following the Chairman's statement.

Mr. Faleomavaega, your questions?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. And I do appreciate your calling this hearing this morning as an oversight concerning these two important Congressional enactments.

As a followup of the Chairman's question, I want a little more enlightening statements here, if you could just describe. When you talk about habitat, and the map that the Chairman had indicated to you, Ms. Dalton, we are talking about how many miles out? Is it beyond the 200-mile EEZ zone, or within 50 miles?

Ms. DALTON. It is hard to tell, but that looks like it is probably 200 miles—

Mr. FALEOMAVAEGA. How about Alaska? Is it about 500 miles out?

Ms. DALTON. Is it limited by 200?

Mr. FALEOMAVAEGA. It is about 22 miles?

Ms. DALTON. Two hundred.

Mr. FALEOMAVAEGA. It is 200 miles?

Ms. DALTON. Which is the Federal Exclusive Economic Zone.

Mr. FALEOMAVAEGA. Yes. So it is within the EEZ zone. OK. And if you were to describe what is an essential habitat, what would that be described as, as far as the geography of the site? Is that within still the same scope, or is there a different definition? What is the difference? If you have an essential habitat, what are you talking about?

Ms. DALTON. Well, that is the essential fish habitat. And it is not necessarily a biological definition, as much as it is the definition that is in the Act.

Mr. FALEOMAVAEGA. OK. So once it is classified as a habitat, it is an essential habitat?

Ms. DALTON. That is the defined term in the Act, is to identify "essential fish habitat." And those are areas that are required for fish spawning and feeding and growing.

Mr. FALEOMAVAEGA. We are talking about two acts, the Magnuson-Stevens Act and the Sustainable Fisheries Act. What is the current cost in the administration of the Magnuson-Stevens cost, on an annual basis?

Ms. DALTON. Our request—We currently are spending about \$165 million for implementation of the Magnuson-Stevens Act. And then our request for next year is just over \$168 million. The Sustainable Fisheries Act is in large part in a series of amendments to the Magnuson-Stevens Act.

Mr. FALEOMAVAEGA. I see. On the status of our regional councils, I understand from your recent statement here that regional councils are strictly on an advisory basis. They are not policymaking bodies?

Ms. DALTON. No, they really are a unique creature in the Federal bureaucracy. The problem is that they do not fit into either a category of being an advisory—

Mr. FALEOMAVAEGA. Would you rather get rid of them?

Ms. DALTON. No.

Mr. FALEOMAVAEGA. No? OK.

Ms. DALTON. But they do not fit neatly into either an advisory status or a Federal status. And those are really the only two defined things. They are kind of an amalgam of both. So for many situations, again, they are treated as advisory groups.

Mr. FALEOMAVAEGA. So when does it become advisory? When something really hits the fan, or rubber hits the road?

Ms. DALTON. Primarily, for administrative purposes.

Mr. FALEOMAVAEGA. Suppose there is an advisory position that is different from the Administration position. How would such a conflict be resolved?

Ms. DALTON. That is where we come into the approval and disapproval process. We take the recommendations of the council. If they meet the requirements of the national standards and the other requirements of the Act, then we approve them.

Mr. FALEOMAVAEGA. So are we somewhat duplicating our efforts here, in having the council do one thing and the NMFS doing something else? I mean, where are the positives, as far as the relationship? It sounds to me that you are constantly fighting each other.

Ms. DALTON. I do not think we really are constantly fighting each other. I think the councils really are a unique opportunity to bring in Federal managers together with state managers and the

stakeholders, to really have a participatory process to develop fishery management decisions. And it is predicated on the belief that the industry can contribute to the regulatory process.

Mr. FALCOMA. Is that a fair statement, Mr. Commissioner, or Mr. Chairman?

Mr. BRANCALEONE. That is a fair statement. But I did want to disagree with Ms. Dalton about the councils not being policy-makers, because in our minds we are policymakers. And we, at least in the Northeast, have formed a partnership with the National Marine Fisheries Service, and it usually works pretty good.

The only time it does not work good is when everyone sitting around the table feels that an emergency action is necessary, but someone there has to stymie it for us. And I am not saying that that is intentional, but that is exactly what happens at times. In my understanding, it is not just the New England region; it is all around the country.

Mr. FALCOMA. For 3 years now, since we have implemented the Sustainable Fisheries Act, Ms. Dalton, do you consider the Act worthy of its purpose? Or do you think that it is just another added layer of bureaucracy that just starts shuffling paper? Or do you think that the Act really is being effectively implemented in such a way that it meets the goals or the intent of the Congress?

Ms. DALTON. I may be slightly prejudiced, having spent a great deal of time working on developing it, but I think it has worked. The biggest problem that we have is that there is going to be a time line. We are dealing with issues, we are trying to rebuild over-fished stocks, we are beginning to wrestle with essential fish habitat and with reducing bycatch. But a lot of the decisions that we make now, we will not even see whether they work or not for a number of years, particularly in the area of rebuilding stocks.

So what we have tried at this point, I think, is to get all of the ground work laid and all of the tools in place for the councils and the National Marine Fisheries Service to move forward with the implementation.

Mr. FALCOMA. It is my understanding that there are three basic objectives or intents of the Congress, for the reasons why the Congress passed the Magnuson-Stevens Act: To reduce the bycatch; to identify and protect habitats; to identify and protect and rebuild over-fished fisheries.

So the Congress then went and passed the Sustainable Fisheries Act. Is there a conflict here? Are we duplicating the purpose and the intent of the two enactments?

Ms. DALTON. The Sustainable Fisheries Act, probably 90 percent of it are amendments to the Magnuson-Stevens Act. And the authorities that resided in the Magnuson-Stevens Act, probably all of the authorities that were necessary to have healthy and sustainable fisheries were in place before the Sustainable Fisheries Act was passed.

What it did was to clarify and provide additional procedures to the councils and to the National Marine Fisheries Service, and clarify policies that we needed to achieve those goals.

Mr. FALEOMAVAEGA. You mentioned that the U.S. had exported over \$3 billion in the seafood industry. How much have we imported in seafood?

Ms. DALTON. I think it is more.

Mr. FALEOMAVAEGA. How about \$7 billion?

Ms. DALTON. OK.

Mr. FALEOMAVAEGA. Now, I am curious, and this is from a layman's point of view. If we are exporting three billion and we are importing seven billion, are we making any real serious effort to produce fish domestically to meet the demands of the American consumer? I mean, why do we have to import \$7 billion worth of fish or seafood? Why can we not do it domestically, on our own?

Ms. DALTON. And this is one reason why it is so important to rebuild fisheries, because we can increase our domestic production if we have healthy fisheries. The problem is that we have some fisheries that are in trouble and they are not producing at the long-term potential yields that they could produce. The other thing is that American consumers have a very large appetite for seafood.

Mr. FALEOMAVAEGA. How do we compare in our technology, as far as the seafood industry is concerned, with other countries?

Mr. ROSENBERG. Congressman, I think we compare extremely well. Our companies are extremely competitive. There are other countries, of course, that produce large amounts of seafood in various areas.

I do not believe that we could, through natural production, meet the entire demand for American consumers. We certainly could get closer, if we rebuilt the over-fished fisheries and had them producing at their maximum level. But I would suspect there always will be some demand for imported products; not because we are doing something wrong, but because, you know, our appetite for seafood will extend beyond the production of our natural system, as augmented by aquaculture and other sources—which has been increasing rather dramatically.

Mr. FALEOMAVAEGA. Well, I will withhold further followup on that. But just quickly, I note that there were 80 species of fish that were listed as being over-fished. Where are we with those 80 species, having proper regulations? Are we up to date on all that? You do not have to have—I mean, is it pretty good?

Ms. DALTON. I think we have rebuilding plans for 59 species at this point. So we are still working on some of them.

Mr. FALEOMAVAEGA. Very essential fish to our industry? That is a lot. Eighty species? Like what?

Mr. ROSENBERG. In some cases—I believe we have rebuilding plans in place for virtually all of the major species; but there would be additional species that are not yet under rebuilding. And we are working, of course, under the mandates of the Act, to develop rebuilding programs for all species. In some cases, some of the ones that do not formally have a rebuilding plan are dealt with under other provisions of law, or international issues.

So we do have rebuilding plans, and are making progress on many of those over-fished fisheries. But it is quite difficult bringing back a natural resources, as I am sure you know.

Mr. FALEOMAVAEGA. We have kicked this issue around now for how many years? And I notice also, one of the essential elements

of the Magnuson-Stevens Act was to look at the problem of bycatch. And I think I may have mentioned in previous hearings too, Mr. Chairman, the very serious problem of bycatch, where total waste is being conducted in the fact that these fish are just as good, edible, and yet just being wasted out in the ocean when the fishing industry goes out only for one particular species, and to the detriment of other fish that are just as good for consumption.

Where are we exactly on the issue of bycatch, as a policy in our country? And what are we doing with other countries? Because they are probably the worst abusers of this bycatch issue that we have been talking about.

I understand in the billions of dollars worth—billions of dollars worth—of fish that is being wasted, or “bycatch,” as it is commonly known, that people of the world—You know, people are starving to death. And yet, this fish is being wasted.

Do we have a definite policy? Are we aggressively pursuing this issue with international forums? How do I tell a purse seiner coming from San Diego that, “If you catch three tons of fish that are not tuna, go ahead and just throw it overboard”?

Mr. ROSENBERG. Congressman, a lot of the bycatch problems are an economic issue. Of course, the reason in some cases that fish are thrown overboard, such as the example you gave, is because the value of the products is very low relative to the target. That is not always the case with bycatch, but it is often the case with bycatch.

We do have domestically and internationally an aggressive program. Under the Sustainable Fisheries Act, we are mandated to try to minimize bycatch. Under the agreement that we were instrumental in promoting within the United Nations, there is an international agreement to try to minimize bycatch wherever possible. That is the U.N. treaty on straddling fish stocks and highly migratory fish stocks. That treaty we expect to come into force fairly soon.

And in addition, in the Food and Agricultural Organization of the United Nations, and in all of the regional fishery organizations around the world that we participate in, we have strongly promoted bycatch reduction measures, to the extent possible.

It still is a large problem. But I do think that we are making substantial progress, both internationally and domestically. It is a difficult problem, though, not only economically, but sometimes it relates to the complications of the regulations and so on, which can have impacts on bycatch.

Mr. FALEOMAVEGA. Thank you very much.

Ms. DALTON. We do have a document that we can provide you that discusses our efforts to diminish bycatch.

Mr. FALEOMAVEGA. Please. I would appreciate getting a copy.

Mr. Chairman, thank you very much.

Mr. SAXTON. I thank you.

Mr. BRANCALEONE. Mr. Chairman, may I just comment on one issue that the Congressman brings up?

Mr. SAXTON. Sure.

Mr. BRANCALEONE. And it is the redundancy and the duplication and the relationship, and how accountable is the system—

Mr. SAXTON. Could you do me a favor, and pull the microphone just a little closer?

Mr. BRANCALEONE. I am sorry.

Mr. SAXTON. Thank you.

Mr. BRANCALEONE. And whether the council system is working or not. I would like to speak, if I could, as just a taxpayer, and not a member of the council, but as one who has fought long and hard years ago for the council process. And I would hope that no changes in the Act would lead to any deletion of the councils. Because in my opinion, it is the expertise on the council that is going to bring some sanity to the whole process.

If you put it in light with the issue of emergency action and having the regional administrator vote on those actions, let me say that Andy Rosenberg and I sat on the council together when he was regional administrator. And he and I locked horns many times, but we walked away as friends.

But when you have industry people on the council who feel that there is an emergency at hand, and you have, as in our case, five state directors who feel there is an emergency at hand, and all of those people vote in favor, then it is not the time for the regional administrator to vote against it—which in my opinion is wrong. But for the most part, we work together, hand in hand, especially in the last few years, on getting the job done.

I just wanted to stress that if you do away with the councils, then all that the industry has fought for years ago with the advent of the 200-mile limit is just going to go down the tubes. And I hope that there is not even a consideration of that.

Mr. SAXTON. May I just ask you why you think there is a notion of doing away with councils?

Mr. BRANCALEONE. Well, there are people who feel that there are—Maybe I should not even bring it up, but I mean I have heard it said that it is a case where the fox is watching the chicken coop. And it is so far removed, it is not funny. That is not the way it works.

The whole problem with the council process is that a lot of times common sense cannot come into the picture here: You know, industry people sitting around the table, who have common sense and know the business, know that this is the way to go; but people who sit behind desks, or scientists, say, "No, that is not." And that is where we butt heads once in a while. But in a democracy, as you know, we come to some agreements.

Mr. SAXTON. Just to give you some reassurance, I know of no one on the Subcommittee, nor anyone on the full Committee, who has any notion of doing away with the council part of the partnership. Now, there may be some notion of doing away with the other half of the partnership—

[Laughter.]

Mr. SAXTON. I am glad you are laughing, Penny.

Mr. Brancalone, a two-part question: Do you believe the definition of "essential fish habitat" is too broad in the current statute? And was NMFS guidance in the identification of "essential fish habitat" helpful to the council process?

Mr. BRANCALEONE. Yes, and yes. Yes, on the first one. And they did not give us the guidance they had. And I do not fault them for that, because I do not believe they had the information. I think that the critical habitats of concern is where we have the better in-

formation, and that to me is where regulation should come in to deal with fish habitat.

I do not know about other councils, but a lot of our fish habitat looked a lot like the maps that you have. And if you go back and look at the record, I do not think you will find anybody that voted that opposed the essential fish habitat. Because it is motherhood and apple pie: Everyone wants to protect fish habitat.

But 3 years ago when this was implemented, we knew it was a freight train coming at us. No. 1, we did not have enough data. No. 2, we did not have the manpower. No. 3, we did not have the money. So nine times out of ten—and no disrespect—when laws are made and changed, then there has to be something behind it to back it up in the way of financing.

So again, there are either abstentions or “Yeses,” on the votes when dealing with essential fish habitat.

Mr. SAXTON. You answered “Yes” to the first part of that question, and that is interesting. Do you have suggestions as to how you think the definition could be improved?

Mr. BRANCALEONE. No, we were looking toward coming up with some suggestions for you and the National Marine Fisheries Service.

Mr. SAXTON. Well, we would certainly appreciate that. Let me ask you both kind of a general question, something that people that have been in my company have heard me say before. As we look at the history of the regulatory process under Magnuson-Stevens, if you go around the coast of the United States it is easy to pick out examples that have been less than successful. And I am not being critical of anybody on this. I am only asking this to get some ideas about how we can make the process work better from our side.

But as you look around the coast of the United States, if you start in New England and look at the groundfish fishery, we promoted consumption. We helped enlarge the fleet. I am saying “we.” The fishermen went out and caught too many fish. The fishery collapsed, and then we had to put in place programs to help it recover.

And the same thing happened with striped bass on the East Coast of the United States. The same thing happened with sharks, is currently going on with the shark fishery. It happened with redfish in the Gulf of Mexico. It happened with sea urchins on the West Coast. I do not know whether salmon is a good example or not, but certainly there is a problem that we can point to there.

And what happens is, we have this cycle that occurs: We promote consumption; fishermen go out, sometimes with our help from financial aid; the fishery collapses; and then we have a success, we call it a success, when the fishery recovers. That is a cycle that we ought not to see so often. Is there anything in the law, is there anything in Magnuson-Stevens, that you would like to see to help us get ahead of these collapses that seem to occur so often?

Ms. DALTON. I think there are a couple of things that are in there now. One is the report that we do every year that basically does the assessment and kind of gives you a heads-up on what fisheries are getting into problems.

We probably also need to see if there are some things that we can do to act more proactively when we have got a new stock of fish, or a stock is coming back that has been depleted for a long period of time, to proactively get ahead of the fleet, so that they are not making the investment and then we are forcing them out of business, or cutting back on them, or making it difficult for them to make a living.

We need somehow to match up the capacity and the resource on a long-term basis. And that is basically what we are trying to do with these rebuilding programs, so that we do not have too many fishermen chasing too few fish. Because as long as we do have that situation, we are creating economic hardship, and we are also going to make management decisions excruciatingly difficult.

The question is going to be now, for species like striped bass: We have brought them back; can we keep them back? And I do not know. Personally, I am optimistic that this is really an evolutionary process, and we are learning as we develop each of these different fishery management plans on what the best way to manage the resource is, and how to keep it in better condition.

Mr. SAXTON. Do you have any specific suggestions on legislative changes that need to be made?

Ms. DALTON. Probably, the biggest thing that we need is to encourage improvements of the scientific basis for management decisions. And I will let Andy chime in on this.

Mr. ROSENBERG. Thank you. Mr. Chairman, I think the scientific basis is a very important consideration. But I would also point out, in one of the reports that was produced under the Sustainable Fisheries Act, that report on ecosystem management by the National Research Council, they also discuss the idea of, if you like, precautionary management plans for resources that may not yet be—or umbrella management plans. Not necessarily because you are trying to address a problem, but because you want to prevent one in the future.

And right now, the focus of the Act certainly is on addressing problems such as over-fished stocks that need rebuilding. Although it is allowed, there is not the mandate to implement management plans for stocks that are newly exploited, or have not been exploited in some time. And I believe Joe Brancalone has a good example in New England of the herring stock. Now the council has worked toward providing a new herring management plan, because that stock is at very high levels. The same thing with mackerel in the mid-Atlantic.

But those discussions are extraordinarily difficult, because people are not very willing to accept restrictions on a stock that is in very healthy condition and in fact could benefit by fishing down. So if we had greater ability to move forward under a mandate for precautionary management plans, or the idea suggested in the ecosystem report, that would probably address in part some of the problem that you have raised, sir.

Mr. SAXTON. Mr. Brancalone, would you like to comment?

Mr. BRANCALEONE. I am sitting here racking my brain, Mr. Chairman, as to what changes might be made in the Act. And frankly, I do not know what they could be.

Mr. SAXTON. Let me ask this specific question. One of the things that I find kind of ironic is that we have legislated at least two general goals. One is to promote consumption; and the other is to conserve fish. Is that as much of a conflict in your jobs as it appears to me to be?

Mr. BRANCALEONE. No, because I think if we do our jobs and we conserve fish, then we will have enough as far as consumption. I do not see that as a problem.

Mr. SAXTON. Well, why do you have to promote consumption? I am a little bit lost. Years ago, maybe we had to promote the consumption of chicken. Years ago, maybe we needed—When I was a kid, my mom used to promote the consumption of broccoli. When I go to the fish store today and pay \$10 a pound for fish, it seems to me that there is pretty good demand for fish.

Mr. BRANCALEONE. Depends on what you are buying, Mr. Chairman. Years ago, we were promoting pollock—

Mr. SAXTON. Yes.

Mr. BRANCALEONE. [continuing] which was a trash fish.

Mr. SAXTON. And—excuse me—we did promote the consumption of shark, didn't we?

Mr. BRANCALEONE. I do not know. I think so.

Ms. DALTON. Yes.

Mr. SAXTON. Yes. I mean, we even issued pamphlets with recipes for shark meat. Now look what we did to shark. Does that not create a conflict? I mean, you identify an under-fished fishery, shark; promote the consumption of shark; and now the fishery is in danger, if it has not already collapsed.

Mr. BRANCALEONE. If you had promoted the consumption of shark, and we stayed with using—what do they call it?—harpooning, we would still have a lot of sharks around. The problem is the fishermen become too efficient in what they do.

Mr. SAXTON. Well, of course.

Mr. BRANCALEONE. I mean, and that is the name of the game to them. Their concern is making money. And just as technology goes, they are going to go, too. So again, I do not think that that is the problem. I think it is just having the guts to do what you have to do to conserve fish. And I mean, that is evident in New England lately.

Mr. SAXTON. But does it not make it harder to conserve fish? I am not trying to argue. You know more about this than I do. You have been in it for a long time.

I have another job here. I am the Chairman of the Joint Economic Committee. And we talk a lot about supply and demand, and what demand does for the economy. And in the world of fisheries, every time we increase the demand for fish, we increase the likelihood that more people want to go and be involved in the industry and catch more fish. Because the price goes up because the demand goes up, and it becomes profitable, and so we find more fishing pressure as a result of the demand.

And I find it kind of ironic that we have all these problems with fish conservation, and yet the very agency that is supposed to be carrying out the conservation efforts also is in charge of creating demand.

Ms. DALTON. I think at this point, though, we spend almost no resources or dollars on promoting consumption.

Mr. SAXTON. That made me feel better.

Ms. DALTON. Yes. I think things like that, we do do things with the industry if there is a market for a product overseas, to help them get through the bureaucratic hurdles that they need to do. There also was a move a few years ago to make seafood eligible under the Ag-Marketing Act, and I think they probably do more to promote seafood than we do at this point.

Mr. SAXTON. I have just been handed a note. The real problem—and you can respond to this—the real problem is the lack of science for making sure demand does not outstrip conservation. Is that a fair statement?

Ms. DALTON. That is a huge problem for us. And that is what we need to keep working to improve, the scientific basis for our management decisions.

Mr. SAXTON. Mr. Brancalone, would you like to comment?

Mr. BRANCALEONE. Just I echo what Penny just said.

Mr. SAXTON. I would like to ask a question on behalf of Mr. Gilchrest, who could not be here today. The question is: Why does North Carolina need an additional seat on the Mid-Atlantic Council?

[Laughter.]

Mr. BRANCALEONE. Most of the states have an at-large seat and an obligatory seat. And in the last reauthorization, North Carolina was given an obligatory seat on the Mid-Atlantic Council. And there are members who feel that that is not proper; that they should have an opportunity to have an at-large seat as well as an obligatory seat.

Mr. SAXTON. Thank you.

Mr. BRANCALEONE. You are welcome.

Mr. SAXTON. Mr. Brancalone, the issue of using maximal sustainable yield as a fishery management target has caused confusion in many fisheries. How does NMFS use maximal sustainable yield? And should this concept be replaced with a more concrete target?

Mr. BRANCALEONE. I will let the Service answer how they use it, Mr. Chairman, if I may. But as you see in my statement from all of the chairmen, we disagree with the use of the MSY. Again, we do not have any specific recommendations for you, but we are working on getting that for you. And we want to work with you to come up with something else.

Mr. SAXTON. Penny, do you want to comment?

Ms. DALTON. I am sorry, I missed the question.

Mr. SAXTON. Is MSY working well, and should it be replaced with a more concrete target?

Ms. DALTON. I think that one we will turn over to Dr. Rosenberg.

Mr. SAXTON. OK.

Mr. ROSENBERG. Mr. Chairman, I think in general MSY is working well. I think it is important to realize that MSY is a reference point that fishery scientists have developed. You could use alternative reference points. Probably it would change slightly the specifics of how over-fishing definitions and rebuilding programs would

look, but it probably would not change the overall need to ensure that you are not over-harvesting the stock.

The MSY is fairly straightforward in terms of how it is calculated, based on the available data. Sometimes the data is rather scanty to actually calculate it, but that would be true for most reference points. So in some ways, I think people are concerned that the use of the concept of MSY is the culprit, and I am not really sure that that is the case. As long as we want to have some kind of a clear measure of whether we are over-fishing or not, you need to have a reference point. MSY is one example of a reference point, and I do not believe that changing to a different version would really help very much.

Of course, there was a substantial change in 1996 of requiring that there be a very clear definition of over-fishing in the Act. And the alternative would be go to back the other direction and have a more nebulous concept of over-fishing, and I do not think that that would actually help in the process of rebuilding the over-fished stocks. Thank you.

Mr. SAXTON. I have a letter here from the North Pacific Council, and they note here that MSY is not definable in every fishery. Can you elucidate on that for us?

Mr. ROSENBERG. While I do not agree with the statement technically, I think you may not be able to estimate it in every fishery, because you may not have sufficient data available; although it is likely that you can make an estimate, with varying degrees of uncertainty, for most every fishery.

That would be true if you chose another reference point, as well. What we have done in terms of implementing the provisions for defining over-fishing based on MSY is, we have said that you should use MSY, and if you do not have sufficient information you should develop a proxy. In other words, do the best you can to try to meet the intent of defining an over-fishing standard based on MSY. And in fact, I think we have been very successful at that in the various fisheries around the country.

So the basis is not as rigid as some people have interpreted, because we have specifically in our guidelines said in those cases where you do not think you have sufficient information, use a proxy. And there are many well-known proxies for portions of that definition. For example, long-term average landings in some cases is used as a proxy for MSY. And for most fisheries we have something like that.

There are problem areas, but it is based on the data, rather than the concept, I believe.

Mr. SAXTON. OK. Well, listen, I want to thank all of you very much for being with us this morning. I just want to ask unanimous consent at this point that other members who may not have been able to make it here today may submit their statements for the record.

[The statement of Mr. Pallone follows:]

Mr. SAXTON. In addition, there may be some other questions that we will want to submit to you in writing. And if you would be so kind as to respond to those, we would appreciate it.

[The information follows:]

Mr. SAXTON. And I would just like to remind everyone that this is the first of several hearings on the Magnuson-Stevens reauthorization, and we look forward to working with you through the process. Thank you very much. And the hearing is adjourned.

[Whereupon, at 12:22 p.m., the Subcommittee was adjourned.]

MAGNUSON-STEVENS ACT LITIGATION
Cases Pending October 1, 1997 - July 22, 1999

Challenges to Regulatory Actions

Bluewater Fishermen's Ass'n v. Daley; No. 2:99CV1005; E.D.Va.; July 8, 1999; Magnuson-Stevens Act, APA, Regulatory Flexibility Act challenge to highly migratory species FMP regulations, particularly trip limits for Atlantic bluefin tuna caught by longliners, June closure of the "Northeast United States closed area," the VMS requirement for pelagic longline vessels, the pelagic shark quota, and the pelagic longline mainline length limitation; open case.

Recreational Fishing Alliance v. Daley; D.N.J.; July 7, 1999; Magnuson-Stevens Act, Atlantic Tunas Convention Act, APA, NEPA, and Regulatory Flexibility Act challenge to recreational yellowfin tuna retention limits and recreational shark minimum sizes and retention limits under the highly migratory species FMP; open case.

Recreational Fishing Alliance v. Daley; No. C-99-248; S.D.Tex.; July 1, 1999; Magnuson-Stevens Act challenge to emergency rule setting minimum size limit of 18 inches for red snapper and closing the fishery on August 29, 1999; open case.

Southern Offshore Fishery Ass'n v. Daley; No. 99-1455-CIV-T24C; M.D.Fla.; June 30, 1999; Magnuson-Stevens Act, APA, and Regulatory Flexibility Act challenge to the 1999 commercial shark quotas; consolidated with 1997 Southern Offshore Fishery case; open case.

National Audubon Society v. Daley; No. 1:99CV01707; D.D.C.; June 25, 1999; Magnuson-Stevens Act and APA challenge to NMFS' alleged failure to protect Western Atlantic bluefin tuna from overfishing and to establish an adequate rebuilding program; open case.

National Coalition for Marine Conservation v. Daley; No. 1:99CV01692; D.D.C.; June 24, 1999; Magnuson-Stevens Act and APA challenge to regulations implementing the billfish amendment and FMP for highly migratory species, particularly alleging failure to impose adequate bycatch measures and rebuilding plan for swordfish, blue marlin, and white marlin; open case.

East Coast Tuna Ass'n v. Daley; No. 1:99-CV-01560EGS; D.D.C.; June 16, 1999; Magnuson-Stevens Act, Atlantic Tunas Convention Act, APA, Regulatory Flexibility Act challenge to the annual allocation cap on the Atlantic bluefin tuna purse seine fishery; open case.

West Coast Seafood Processors Ass'n v. Daley; No. CV99-831; D.Oregon; June 11, 1999; Magnuson-Stevens Act and APA challenge to final rule establishing tribal and nontribal allocations of Pacific whiting; open case.

Rogers v. Daley; No. 99CV11217NG; D.Mass.; June 4, 1999; Magnuson-Stevens Act, APA, Regulatory Flexibility Act challenge to the regulation under Framework Adjustment 27 of the Northeast Multispecies FMP that imposes certain restrictions on otter trawl gear; open case.

Gulf of Maine Fishermen's Alliance, Inc.; Civ. Action No. 99-11195GAO; D. Mass; June 2, 1999; Magnuson-Stevens Act, Regulatory Flexibility Act, and APA challenge to Framework 27 of the Northeast Multispecies Fishery Management Plan, which imposes fishery closures, reduced trip limits, and other measures in the Gulf of Maine; open case.

Common Sense Salmon Recovery v. Daley; No. 1:99CV01093; D.D.C.; May 4, 1999; ESA, APA, MMPA, Magnuson-Stevens Act request for declaratory and injunctive relief requiring NMFS to conserve salmon in the Pacific Northwest; open case.

Kvilhaug v. Daley; No. 99CV10899DPW; D.Mass.; April 28, 1999; Magnuson-Stevens Act, APA, Regulatory Flexibility Act challenge to regulations implementing Amendment 7 to the Atlantic Sea Scallop FMP, particularly the days-at-sea restrictions and rebuilding goals; open case.

American Oceans Campaign v. Daley; No. 1:99CV00982GK; D.D.C.; April 19, 1999; Magnuson-Stevens Act, APA, NEPA challenge to FMP amendments on essential fish habitat in New England, the Caribbean, the Gulf of Mexico, the Pacific, and the North Pacific; open case.

Natural Resources Defense Council v. Daley; Civ. Action No. 1:99CV00221; D.D.C.; January 29, 1999; Magnuson-Stevens Act, NEPA, and APA challenge to the 1999 summer flounder quota; open case.

Gulf of Maine Fishermen's Alliance, Inc. v. Daley; Civ. No. 98CV10744GAO; D. Mass.; June 19, 1998; challenge to Framework 25 of the Northeast Multispecies Fishery Management Plan, which imposes further restrictions on cod fishing, on grounds that it violates Magnuson-Stevens Act, Regulatory Flexibility Act, NEPA, and APA; open case.

Tutein v. Daley; Civ. No. 98-11034-MLW; D. Mass.; May 29, 1998; challenge to identification of bluefin tuna as "overfished" and to National Standard Guidelines; March 17, 1999 order dismissed count I challenging Guidelines, deferred ruling on other issues pending receipt of additional briefs.

Alaska Marine Conservation Council v. NMFS; Civ. No. 98-735; W.D. Wash.; May 29, 1998; Magnuson Act and APA challenge to National Standard Guidelines; dismissed for lack of subject matter jurisdiction on August 7, 1998.

Texas Shrimp Association v. Daley; Civil Action No. B-98-65; S.D. Tex.; May 8, 1998; challenges final regulations implementing Gulf shrimp amendment 9, interim rule on red snapper TAC, and interim rule establishing research program; seeks declaratory judgment, set aside of regulations, and litigation costs; transferred and consolidated with Florida Wildlife Federation v. Daley; Civil Action No. 4:98CV101-RH, N.D. Fla.; March 18, 1998; alleges violation of Magnuson-Stevens Act and APA; seeks declaratory judgment and litigation costs; open case.

Connecticut v. Daley; Civ. Action No. 3:98CV173 (AVC); D. Conn.; January 29, 1998; Magnuson Act and APA challenge to denial of State's petition for rulemaking to revise state-by-state summer flounder allocation system; summary judgment granted to defendants on May 5, 1999; open case.

Connecticut v. Daley; Civ. Action No. 3:97CV2726 (CFD); D. Conn.; December 31, 1997; Magnuson Act and APA challenge to Amendment 10 to the Summer Flounder, Scup and Black Sea Bass FMP; summary judgment granted to defendants on May 5, 1999; open case.

Connecticut v. Daley; Civ. Action No. 3:97-02353 (AVC); D. Conn.; November 5, 1997; Magnuson Act and APA challenge to agency's failure to rule on State's petition for rulemaking to revise state-by-state summer flounder allocation system; stipulated dismissal June 8, 1998; closed case.

Massachusetts Audubon Society v. Daley; Civ. No. 97-12297-WGY; D.C. Mass.; October 14, 1997; challenge to allocation of small bluefin tuna to recreational fishermen; March 19, 1999, ruling dismissing count alleging violation of Magnuson-Stevens Act rebuilding provisions (allocation and monitoring of small bluefin tuna) as not ripe for review.

Kline v. Daley; Civ. Action No. 97-2758; N.D. Cal.; September 22, 1997; Magnuson-Stevens Act, NEPA, RegFlex challenge to agency management of fixed-gear black cod fishery; stipulation to dismiss filed.

Massachusetts v. Daley; Civ. Action No. 97-11400-JLT; D. Mass.; June 19, 1997; Magnuson Act and APA challenge to regulatory amendment under the Summer Flounder, Scup and Black Sea Bass FMP; June 24, 1998 opinion found a violation of national standard 4 in basing state-by-state allocation on data that substantially underestimated Massachusetts' historic scup catch; appealed to First Circuit, No. 98-1917; ruling upheld on February 24, 1999; closed case.

Southern Offshore Fishing Ass'n v. Daley; No. 97-1134-CIV-T-23C; M.D. Fla.; May 2, 1997; challenge to the 1997 commercial catch quotas for Atlantic sharks; ruling for defendants on counts 1, 2, 3, 6, 7, 8, and 9 on February 24, 1998, economic analysis remanded to agency, appeal filed by plaintiffs dismissed for lack of jurisdiction; district court referred issue to mediator; open case

North Carolina Fisheries Ass'n v. Daley; Civ. Action No. 2:97cv339; E.D. Va.; April 7, 1997; Magnuson Act and APA challenge to 1997 summer flounder quota and overage deductions; North Carolina Fisheries Ass'n v. Daley; Civ. Action No. 2:98cv213; E.D. Va.; February 25, 1998; Magnuson Act and APA challenge to 1998 summer flounder quota and overage deduction on January 23, 1998; North Carolina Fisheries Ass'n v. Daley; Civ. Action No. 2:98cv606; E.D. Va.; June 1, 1998; Magnuson Act and APA challenge to 1998 summer flounder overage deduction on April 28, 1998; order on September 28, 1998 sanctioned agency for submitting "arbitrary and capricious" economic analysis and for untimely adjustment of 1998 quota, by returning to North Carolina the 1997 overage that had been deducted from 1998 quota.

Wisner v. Gulf of Mexico Fishery Management Council; Civil Action No. 96-93-CIV-T-17C; M.D. Fla.; March 28, 1997; challenges agency's implementation of the reef fish snapper permit moratorium; seeks declaratory judgment and injunctive relief; open case.

Fishing Company of Alaska, Inc. v. United States; Civ. No. 97-0126Z; W.D. Wash.; January 27, 1997; in context of challenge to civil penalties, attack on underlying regulations for vessel incentive program; open case.

Midwater Trawlers v. Daley; Civ. Action No. 96-1808; W.D. Wash.; November 14, 1996; Magnuson Act, RegFlex, ESA, and NEPA challenge to allocation of whiting to treaty Indian tribes; Civ. Action No. 97-36008; 9th Circuit; January 29, 1998; on appeal, affirmed government's position on ESA, NEPA, and RegFlex, but reversed lower court's ruling on indispensable parties and remanded treaty right issue to district court; open case.

Washington v. Daley; Civ. Action No. 96-5671; W.D. Wash.; July 2, 1996; Magnuson Act challenge to groundfish allocation and usual and accustomed fishing areas for Washington treaty Indian tribes; Civ. Action No. 97-35680; 9th Cir.; July 3, 1997; reversed lower court's dismissal of usual and accustomed area claim because tribes are indispensable parties and remanded treaty rights issues to district court; open case.

Cape Cod Commercial Hook Fishermen's Ass'n v. Daley; Civ. No. 9611247RGS; D. Mass.; June 17, 1996; Magnuson-Stevens Act and APA challenge to Amendments 7 and 9 to the Northeast Multispecies Fishery Management Plan, partially on grounds that NMFS failed to adequately consider by-catch; denial of motion for TRO to stop experimental scallop fishing in closed area 2 on Georges Bank; case open.

Challenges to Permit Actions

Frontier Fishing Corp. v. NMFS; Civ. No. 99-11088; D. Mass.; May 26, 1999; APA challenge to denial of appeal of permit denial for a limited access multispecies permit; open case.

Patenaude v. F/V Miss Jenna; Civ. No. 98-12351; D. Mass.; November 17, 1998 (NMFS added as defendant May 27, 1999); in rem action against a fishing vessel to enforce maritime lien; first amended complaint seeks injunctive relief against NMFS to cancel transfer of limited access permit eligibility from the F/V Miss Jenna to another vessel; preliminary injunction ordered NMFS to cancel transfer and restore permit eligibility to the F/V Miss Jenna; open case.

Vo v. Daley; Civil Action No. H-98-0683; S.D. Tex.; March 10, 1998; challenge of agency permit determination; Court issued a final judgment that granted, in part, the Government's Motion for Summary Judgment; the Court remanded to NMFS the issue of whether Vo was an operator whose earned income would have qualified him for a Class 2 commercial red snapper license; Defendants' motion to amend judgment granted November 16, 1998.

West v. NMFS; Civ. Action No. A97-358; D. Alaska; November 17, 1997; Ocean Prowler Partnership v. NMFS; Civ. Action No. A97-427; D. Alaska; November 6, 1997; Prowler Partnership v. NMFS; Civ. Action No. A97-413; D. Alaska; October 30, 1997; Foss v. NMFS; Civ. Action No. C96-1583Z; W.D. Wash.; October 4, 1996; Turner v. Daley; Civ. No. 97CV1214NG; D. Mass.; September 25, 1997; Dell v. NMFS; Civ. Action No. C96-0613C; W.D. Wash.; April 19, 1996; Prowler Partnership v. NMFS; Civ. Action No. A96-126; D. Alaska; April 12, 1996; Smee v. NMFS; Civ. Action No. C96-1512 W.D.; W.D. Wash.; September 19, 1996; Gates v. NMFS; Civ. Action No. C96-1520R; W.D. Wash.; September 20, 1996; appeals of agency's determinations of eligibility for halibut and sablefish individual fishing quotas; agency upheld except in one case by District Court; agency upheld in two Ninth Circuit appeals, five pending.

Parker v. United States; Civ. Action 97-0390; W.D. Wash.; February 27, 1997; Magnuson Act challenge to denial of groundfish limited entry permit; Civ. Action No. 97-36112; Ninth Circuit; November 24, 1997; government upheld on appeal.

Other Fisheries-Related Cases

O'Callaghan v. U.S. Government; Civ. No. A99-0406JKS; D.Alaska; April 23, 1999; plaintiff seeks to waters off Alaska declared the property of the State of Alaska, and to “prohibit usurpation by the North Pacific Fisheries [sic] Management Council and the U.S. Government and force depositing any and all oil lease monies into [Alaska's] Permanent Fund”; open case.

American Pelagic Fishing Co. v. Daley; No. 99-119C; Cl. Ct.; March 9, 1999; “takings” case under the Fifth Amendment for losses by the owners of the F/V ATLANTIC STAR in revenues and property rights in fishing permits as a result of appropriations riders excluding the vessel from two Atlantic fisheries; \$20 million; open case.

American Pelagic Fishing Co. v. Daley; No. 1:99CV00573; D.D.C.; March 8, 1999; Constitutional challenges (equal protection, due process, bill of attainder, separation of powers) to appropriations riders excluding the F/V ATLANTIC STAR from the Atlantic mackerel and herring fisheries; open case.

Leatherback v. National Marine Fisheries Service; Civil Action No. 99-00152-DAE, D.C. Haw.; February 24, 1999; complaint for declaratory and injunctive relief, alleging that NMFS violated NEPA, ESA, and the APA by failing to properly manage the Hawaii Central North Pacific longline fishery to conserve and avoid jeopardizing leatherback, olive ridley, and loggerhead sea turtles, which are listed as endangered or threatened under the ESA; open case.

Arctic King Fisheries, Inc. v. United States; Civ. No. 99-49; Cl. Ct.; February 1, 1999; “takings” case under the Fifth Amendment for loss allegedly caused by American Fisheries Act's exclusion of the F/V ARCTIC TRAWLER from eligibility for a buy-out or continued participation in Bering Sea pollock fishery; open case.

Kalve v. Daley; Civ. Action No. 99-0004CTV; D. Alaska; January 6, 1999; two counts against NMFS: first seeks an order of mandamus against NMFS requiring a preemption hearing regarding a citation issued to plaintiff by Alaska for illegal retention of sablefish in state waters closed to sablefish fishing; the second seeks declaratory judgment and injunctive relief against NMFS such that sablefish harvested by plaintiff within state waters not be counted against plaintiff's annual IFQ amount; open case.

Native Village of Eyak v. Daley; Civ. No. A98-365; A98-365; D. Alaska; November 2, 1998; aboriginal hunting and fishing rights in the EEZ; open case.

Greenpeace v. NMFS; Civ. Action No. 98-0492C; W.D. Wash.; April 15, 1998; NEPA, ESA, and APA challenges to Alaska Groundfish fisheries management; summary judgment granted on July 9, 1999, to defendants upholding jeopardy/no jeopardy determinations, to plaintiffs and intervenors finding “reasonable and prudent alternatives” arbitrary and capricious; and to plaintiffs on the NEPA allegations; open case.

Humane Society v. Department of Commerce; No. 98-03-00557; U.S. Court of International Trade; March 18, 1998; challenge under the High Seas Driftnet Fisheries Enforcement Act to Administration’s failure to take action against Italy; Court ruled March 5 denying several of defendants’ motions, but requiring Secretary to identify Italy as a driftnetting nation; plaintiffs filed notice of appeal; open case.

Florida v. Daley; Civil Action No. 4:98CV42RH; N.D. Fla.; January 30, 1998; alleges violation of CZMA; seeks order setting aside a Magnuson-Stevens Act rule; plaintiffs dismissed claim with prejudice; case closed December 28, 1998.

British Columbia v. United States; Civ. No. 97-1464; W.D. Wash.; September 8, 1997; alleges violations of the Pacific Salmon Treaty Act and the Magnuson-Stevens Act through failure to agree to fishing regimes under the Pacific Salmon Treaty; district court dismissed complaint as political question; pending before the Ninth Circuit; open case.

Atlantic Fish Spotters Ass’n v. Daley; No. 97-11882JLT; D.Mass.; August 18, 1997; Atlantic Tunas Convention Act challenge to regulation prohibiting use of spotter planes by General Category bluefin tuna fishermen; summary judgment for plaintiffs granted June 10, 1998; open case.

Georgia Fisherman’s Association v. Daley; Civil Action No. CV 296-171; S.D. Ga.; March 24, 1997; challenged State of Georgia’s certified BRD requirements; sought temporary restraining order & permanent injunction; Consent Order on August 7, 1997; closed by Order on 12/10/97.

Cole v. NMFS; Civ. Action No. C96-1797 W.D.; W.D. Wash.; November 15, 1996; Fifth Amendment challenges to agency IFQ appellate procedural regulations; District Court granted summary judgment to agency; plaintiff appealed to Ninth Circuit; open case.

United States v. Washington; Civ. Action No. 9213, Subproceeding 96-2; W.D. Wash.; April 19, 1996; Magnuson-Stevens Act, quantification of Pacific whiting right for coastal tribes; no claim amount; open case.

Native Village of Eyak v. Daley; Civ. No. A95-063; D. Alaska; February 23, 1995; aboriginal title in

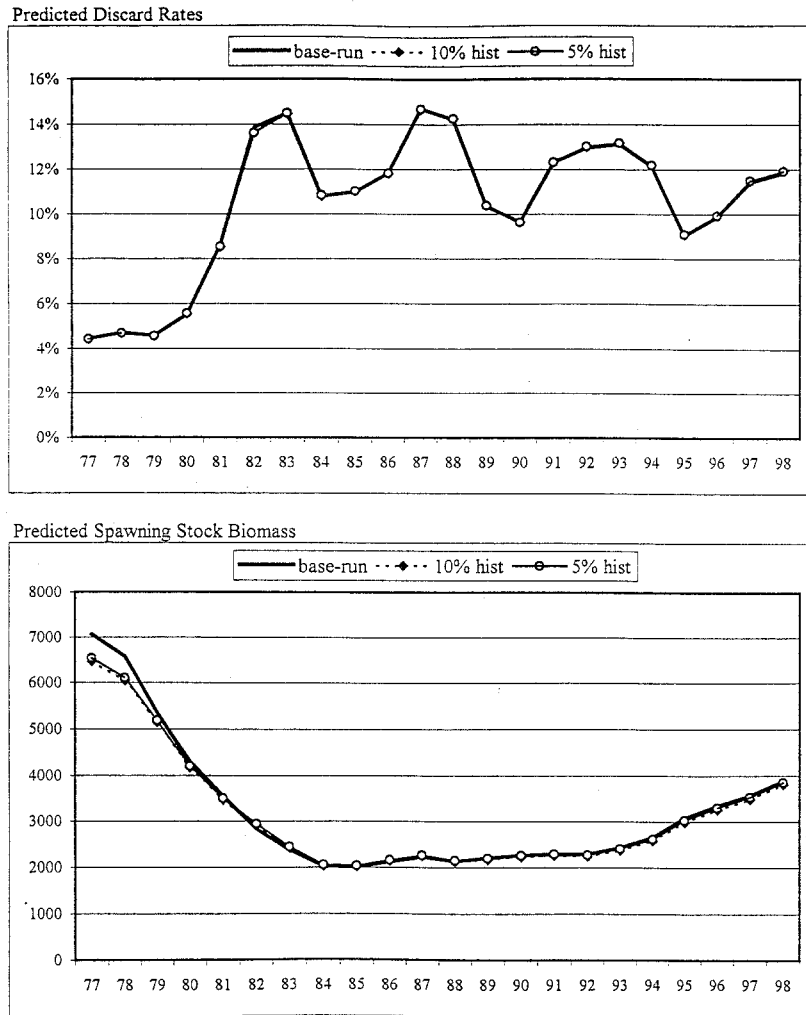
the EEZ, summary judgment granted to defendants; decision upheld by Ninth Circuit; U.S. Supreme Court denied certiorari; closed case.

Fish and Game Fund v. Alaska; Civ. Action No. A92-442; D. Alaska; June 15, 1992; plaintiff seeks order requiring NMFS to preempt State management of salmon fisheries under the Magnuson Act; no claim amount; open case.

Species	Total Tows			From Total Catch Percent Discard			Not Similar
	1996	1997	Combined	1996	1997	Combined	
Flash Sole	644	541	1185	11.4	10.8	11	
Crab	644	541	1185	1.0	3.4	1.9	
Per Sole	644	541	1185	4.1	21.0	9.3	***
Portspine Thornyhead	644	541	1185	29.7	32.7	30.9	
Spine Thornyhead	644	541	1185	6.0	11.2	7.9	***
Flatfish	644	541	1185	29.1	43.2	34.4	***
Bar Rockfish	644	541	1185	19.4	0.7	11.2	***
Lowtail Rockfish	644	541	1185	7.4	35.4	16.3	***
Mer Rockfish	644	541	1185	30.9	42.9	37.0	***
Wastes Complex	644	541	1185	16.5	36.3	24.5	***
Low Rockfish	644	541	1185	2.3	1.6	1.9	
Pacific Ocean Perch	644	541	1185	4.4	21.6	10.8	***
Good	644	541	1185	3.4	4.0	3.6	
ting	644	541	1185	100.0	100.0	100.0	
Catch	768	635	1403	31.8	43.5	36.8	

E. The above data are provided by Oregon Department of Fish and Wildlife as a preliminary compilation of a portion of the data collected via the "Enhanced Data Collection Program". These data are not an analysis and should not be used as representative of the trawl fleet at this time. A full statistical analysis of these data may or may not yield similar results; however it would be inappropriate to assume results prior to the completion of such an analysis. The table may not be reproduced or cited without this note, and ODFW prefers that the bullet statements provided on the same page of this report be included as well.

Figure 10. The base-run model for the northern stock was not sensitive to assumed discard rates.



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Figure 12. Base model estimates ($M=0.25$) for stock biomass (age 3+) and spawning potential for years 1973-1998. Dotted lines represent 95% confidence intervals of model estimates.

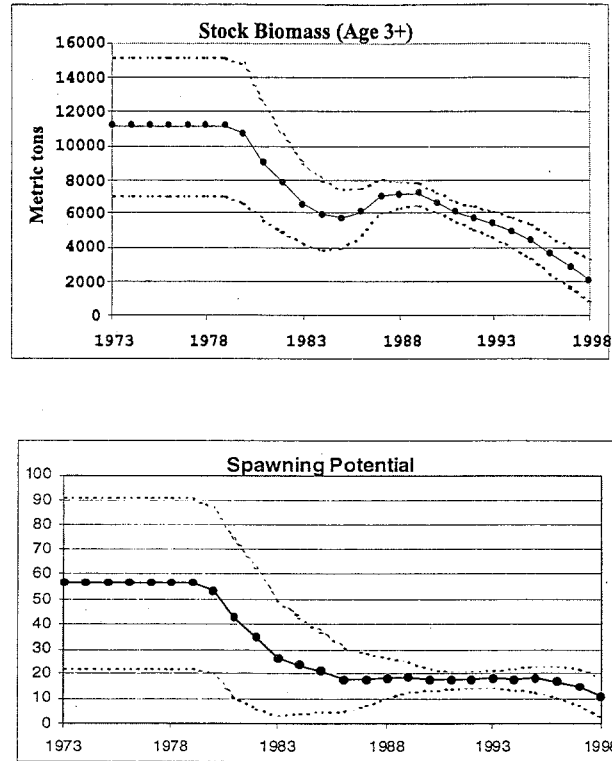
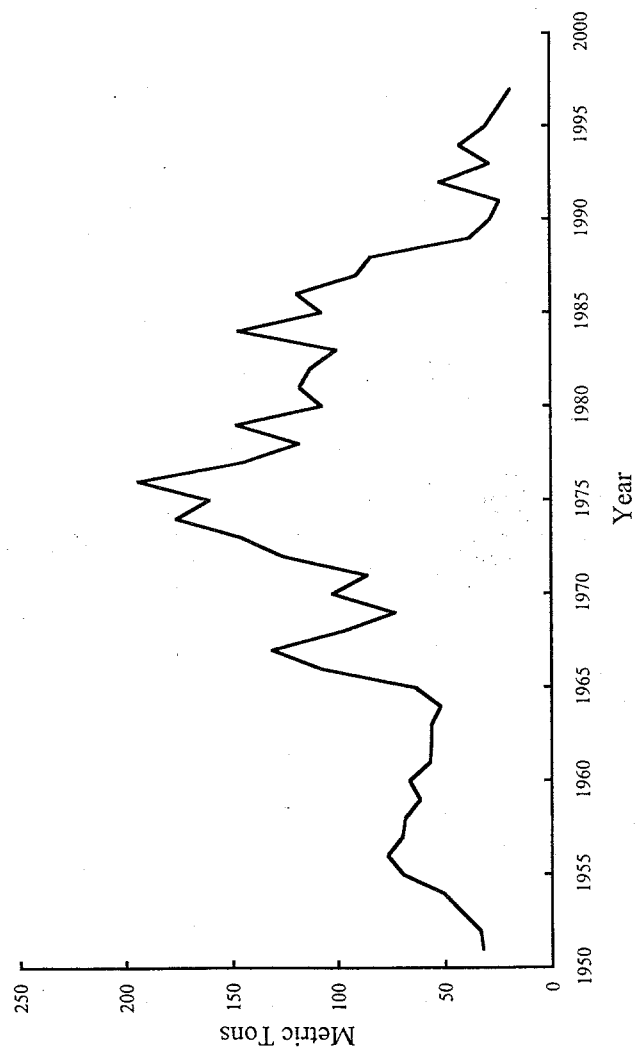


Figure 45. Estimated total catch of cowcod from the Southern California Bight.



Northern Lunar Rock
 Stock biomass
 (mt)

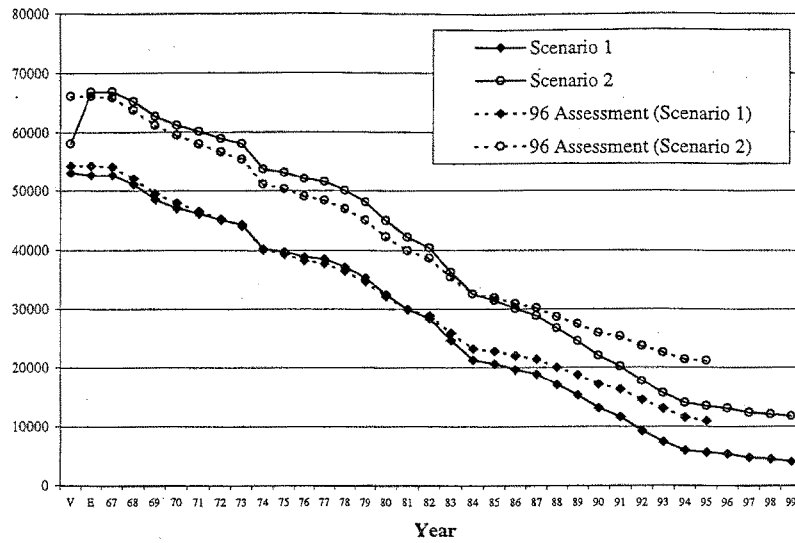


Figure 23. Estimated time series of stock biomass (≥ 2 -yr old fish at the beginning of the year in mt) for model Scenario 1 and Scenario 2 (see Model Selection and Evaluation). Similar time series from the 1996 assessment are also presented. 'V' and 'E' represent virgin and equilibrium stock sizes, respectively.

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Figure 12. Canary rockfish recruitment and total biomass estimates from the base model run ($M=0.06$). Dotted lines represent 95% confidence intervals for the estimates.

